

EXHIBIT C

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<p>515</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION</p> <p>4 ePLUS, INC., : 5 Plaintiff, : 6 v. : Civil Action 7 : No. 3:09CV620 8 LAWSON SOFTWARE, INC., : 9 : January 6, 2011 10 Defendant. : 11 -----:</p> <p>12 COMPLETE TRANSCRIPT OF JURY TRIAL 13 BEFORE THE HONORABLE ROBERT E. PAYNE 14 UNITED STATES DISTRICT JUDGE, AND A JURY</p> <p>15 APPEARANCES: 16 Scott L. Robertson, Esq. 17 Jennifer A. Albert, Esq. 18 Michael T. Strapp, Esq. 19 David M. Young, Esq. 20 GOODWIN PROCTOR 21 901 New York Avenue, NW 22 Washington, D.C. 20001 23 Craig T. Merritt, Esq. 24 CHRISTIAN & BARTON 25 909 E. Main Street, Suite 1200 Richmond, VA 23219-3095</p> <p>Counsel for the plaintiff ePlus</p> <p>DIANE J. DAFFRON, RPR OFFICIAL COURT REPORTER UNITED STATES DISTRICT COURT</p>	<p>517</p> <p>1 (The proceedings in this matter commenced at 2 9:20 a.m.)</p> <p>3 THE CLERK: Civil Action No. 3:09CV00620, 4 ePlus, Incorporated v. Lawson Software, Incorporated. 5 Mr. Scott L. Robertson, Mr. Craig T. Merritt, 6 Ms. Jennifer A. Albert, Mr. Michael T. Strapp, and Mr. 7 David M. Young represent the plaintiff. 8 Mr. Daniel W. McDaniel, Mr. Dabney J. Carr, 9 IV, Ms. Kirstin L. Stoll-DeBell, and Mr. William D. 10 Schultz represent the defendant.</p> <p>11 Are counsel ready to proceed? 12 MR. ROBERTSON: Yes, Your Honor. 13 MR. McDONALD: Yes, Your Honor. 14 THE COURT: All right. Thank you very much. 15 I apologize for keeping you-all waiting this 16 morning. I had a mechanical malfunction that I needed 17 to attend to, and I'm not very mechanically oriented. 18 All right, Mr. Robertson. 19 Dr. Weaver, I remind you you're under the 20 same oath which you took yesterday. 21 THE WITNESS: Yes, Your Honor. 22 BY MR. ROBERTSON: (Continuing) 23 Q Good morning, Dr. Weaver. 24 A Good morning. 25 Q If we could have Plaintiff's Exhibit No. 1 back up</p>
<p>516</p> <p>1 APPEARANCES: (Continuing) 2 Daniel W. McDonald, Esq. 3 Kirstin L. Stoll-DeBell, Esq. 4 William D. Schultz, Esq. 5 MERCHANT & GOULD 6 3200 IDS Center 7 80 South Eighth Street 8 Minneapolis, MN 55402-2215 9 Dabney J. Carr, IV, Esq. 10 TROUTMAN SANDERS 11 Troutman Sanders Building 12 1001 Haxall Point 13 P.O. Box 1122 14 Richmond, VA 23218-1122 15 16 Counsel for the defendant Lawson Software.</p>	<p>518</p> <p>1 on the screen again, the '683 patent, the cover page 2 here.</p> <p>3 Dr. Weaver, the jurors have seen this exhibit now 4 several times and it's in their jury notebooks. This 5 is at tab 2. Can you just tell us what is the title 6 of the patent? 7 A Electronic Sourcing System and Method. 8 Q Has the Court defined the term "electronic 9 sourcing system"? 10 A Yes, it has. 11 Q What's your understanding as to what that 12 construction is? 13 A In the glossary of claim terms, the "electronic 14 sourcing system" has been defined by the Court to be 15 an electronic system for use by a prospective buyer to 16 locate and find items to purchase from sources, 17 suppliers or vendors. 18 Q What is your understanding of what a source is, 19 sir? 20 A A source would be a vendor or a manufacturer or a 21 distributor. 22 Q In the Court's construction of the claim term 23 "catalog" or "product catalog," how does the Court 24 define what a vendor can be? 25 A The vendor, in the Court's construction, a vendor</p>

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<p>575</p> <p>1 the '70s, but the overall components of this system, 2 they haven't been available since the '70s, have they? 3 A I don't think so. 4 Q And you can take known technology and combine it 5 to come up with something new and useful; is that 6 right, Doctor? 7 A Sure. 8 Q The converting icon, I think you talked a little 9 bit about this, but in the Lawson system, how do they 10 perform this functionality of the conversion to find 11 similar, identical or generally equivalent items? 12 A I mentioned these UNSPSC codes. So I'll explain 13 later in detail what they mean, but the gist of it is 14 that by using an 8-digit code, you are drilling down 15 to what's going to be called the commodity level of 16 information. And if multiple items have this same 17 8-digit code, then by the definition of the code they 18 are generally equivalent and substitutable. 19 So the Lawson system uses this UNSPSC code in 20 order to accomplish that task. 21 Q So now that you have discussed sort of the overall 22 functionality of the system in general terms and how 23 it can perform it, you identified various software 24 programs or modules that Lawson offers to do that 25 functionality. Can they be configured in various</p>	<p>577</p> <p>1 procurement systems. 2 Q In your analysis and review of the documents and 3 the deposition testimony, did you make a determination 4 that these foundational software modules were required 5 as part of the Lawson infringing system? 6 A Yes, in the documentation that I read it was very 7 clear that the Lawson system foundation, LSF, had to 8 be installed before you could install the modules of 9 the S3 procurement system. Likewise, the process flow 10 had to be there as well. 11 Q In your report, you called the Lawson system 12 foundation a prerequisite module. What did you mean 13 by that? 14 A The LSF must be there before you can load the 15 modules that are the procurement suite. 16 Q In order to purchase the procurement suite 17 license, the procurement suite, does a customer of 18 Lawson have to license this Lawson system foundation 19 and process flow? 20 A That's what the documentation says. 21 Q Well, I think you touched on the process flow 22 already, but let's take a look, if we can, at the 23 Lawson requisition self service installation guide, 24 which is PX 131. It's in binder 3, Dr. Weaver. 25 Is this document is entitled, "Lawson requisitions</p>
<p>576</p> <p>1 ways? 2 A Yes. Certain modules are required and certain 3 modules are optional. 4 Q Did you prepare a demonstrative to show how these 5 various Lawson procurement S3 modules can be -- these 6 components can build to an infringing system? 7 A Yes, I have several demonstratives that build on 8 each other to illustrate how the software modules 9 build on each other. 10 Q Let's go to the first demonstrative you have. And 11 this one is entitled "Lawson's electronic sourcing 12 systems." And you have a yellow box there. What is 13 that? 14 A So as the name suggests, the platform technology 15 foundation contains the modules that have to be in a 16 functioning Lawson system. 17 Two of those are the Lawson system foundation, 18 which is, again, a set of common computer implemented 19 activities that every software module is going to 20 need. For instance, communication with other modules. 21 The process flow is a module that controls and 22 directs the approval process. So when a requisition 23 comes in, typically a manager approves it, and that 24 approval process is done by the process flow module. 25 So these two are required for all of the S3</p>	<p>578</p> <p>1 Self Service Installation Guide." Did you review this 2 as part of your preparation for your expert report? 3 A Yes, I did. 4 Q So what is this document? 5 A This document explains to the customer how they 6 should go about installing this requisition self 7 service module. We're going to call it the RSS. 8 Q If we could go to bar code 4. It's item 4 of this 9 document. There's a box entitled, "System 10 Requirements" there. Do you see that? 11 A I do. 12 Q Where is the information relevant to the Lawson 13 system foundation here? 14 A It says that the following software and hardware 15 requirements must be met before you install the 16 product. And then in the table below, the first row 17 says, "Lawson system foundation." 18 Q Okay. So before you can install Lawson's 19 requisition self service, one of the requirement 20 components is the Lawson system foundation; is that 21 right? 22 A That's what this says. 23 MR. McDONALD: Your Honor, I object. It's a 24 little unclear at this point because requisition self 25 service is a different module from the ones we were</p>

<p>611</p> <p>1 Q Can we go to barcode -- page 70 in this document. If I</p> <p>2 can find it myself. The Bates number ends with 318.</p> <p>3 MR. McDONALD: Your Honor, I hate to interrupt. Our</p> <p>4 Exhibit 112 ends at page 64 of the 301.</p> <p>5 MR. ROBERTSON: Mr. McDonald, what page does it end</p> <p>6 in?</p> <p>7 MR. McDONALD: My version ends at page 64.</p> <p>8 Q So we were at page 70 in Plaintiff's Exhibit 112 at the</p> <p>9 Bates label that ended 318. And you just referenced this item</p> <p>10 master, and in this document, this Lawson document says what is</p> <p>11 an item master. What does Lawson tell us as to how it defines</p> <p>12 an item master?</p> <p>13 A In the first sentence it says, an item master is a file</p> <p>14 which holds information about an item regardless of where that</p> <p>15 item is used.</p> <p>16 Q So what, if any, relevance does that have to the opinions</p> <p>17 you're going to be offering in this case?</p> <p>18 A Well, it confirms that the item master is going to be</p> <p>19 utilized by requisitions and by purchase orders and that it is</p> <p>20 the central repository where most of the vendor data lies.</p> <p>21 Q And can this item master data store both stock and</p> <p>22 nonstock items?</p> <p>23 A Yes, both.</p> <p>24 Q By nonstock items, what do you mean by that?</p> <p>25 A Those are items that would be ordered from an external</p>	<p>613</p> <p>1 collection of items and associated information including</p> <p>2 various things?</p> <p>3 A Consistent.</p> <p>4 MR. McDONALD: I object to the characterization of</p> <p>5 the Court's construction.</p> <p>6 THE COURT: I didn't hear the last part.</p> <p>7 MR. McDONALD: Maybe it would be helpful just to put</p> <p>8 up the construction itself.</p> <p>9 THE COURT: All right.</p> <p>10 MR. ROBERTSON: Sure. Do you have glossary terms?</p> <p>11 The jury has them.</p> <p>12 THE COURT: The jury has them in the notebook.</p> <p>13 Q So let me --</p> <p>14 THE COURT: What he objected to is you abbreviated</p> <p>15 the term. Isn't that what your objection was?</p> <p>16 MR. McDONALD: That is correct, Your Honor.</p> <p>17 MR. ROBERTSON: I misunderstood. Let me go back</p> <p>18 then.</p> <p>19 THE COURT: That's all he's objecting to.</p> <p>20 MR. ROBERTSON: Thank you for the clarification, Your</p> <p>21 Honor.</p> <p>22 Q There's a catalog definition; correct?</p> <p>23 A Yes.</p> <p>24 Q You have it, and the jury has it. And it says it's an</p> <p>25 organized collection of items and associated information</p>
<p>612</p> <p>1 vendor.</p> <p>2 Q What information about the items is maintained in the item</p> <p>3 master?</p> <p>4 A So that would be things like item number, the item</p> <p>5 description, the unit of measure, the cost, the vendor name,</p> <p>6 and other attributes that the user can define. So there's a</p> <p>7 set of things that must be there like vendor name and cost and</p> <p>8 unit of measure, and there's also, as we're going to see later,</p> <p>9 there's some user defined fields so the user can put in</p> <p>10 information that the user thinks is important about the</p> <p>11 particular item.</p> <p>12 Q Did it also have commodity and classifications codes?</p> <p>13 A Oh, that's right, it can. There's special place for</p> <p>14 UNSPSC codes, and there's programs to load that information.</p> <p>15 Q Refresh the jury, if you would again, on what a commodity</p> <p>16 classification code is at a high level, if you would?</p> <p>17 A Yes. So using these UNSPSC codes, these are eight-digit</p> <p>18 codes. When you use all eight digits, it is a classification</p> <p>19 for items that are generally equivalent or substitutable. So</p> <p>20 it's a way of finding similar items.</p> <p>21 Q So this various data points, data information that you</p> <p>22 just identified, item number and item description and unit of</p> <p>23 measure and pricing, are all those -- that type of data and</p> <p>24 information consistent or inconsistent with the Court's</p> <p>25 construction of an associated -- or, excuse me, organized</p>	<p>614</p> <p>1 published by a vendor which includes suppliers, manufacturers,</p> <p>2 and distributors which preferably includes, and then there's a</p> <p>3 number of specified things, part number, price, catalog number,</p> <p>4 vendor name, vendor ID, a textual description of the item, and</p> <p>5 images of or relating to the item. Do you understand that</p> <p>6 that's the Court's construction?</p> <p>7 A Yes, I do.</p> <p>8 Q Is that consistent or inconsistent with the various item</p> <p>9 data that can be included in the item master?</p> <p>10 A Consistent.</p> <p>11 Q The vendor cost information, is that contained in the</p> <p>12 vendor item table in a purchase order module?</p> <p>13 A Yes.</p> <p>14 Q Are we going to see that at some point?</p> <p>15 A Yes.</p> <p>16 Q If we can, in the same exhibit, going back to barcode page</p> <p>17 46, Bates label 294?</p> <p>18 THE COURT: Excuse me just a minute. Are you saying</p> <p>19 that in your view, item master fits the defined term catalog?</p> <p>20 THE WITNESS: Yes, along with the vendor item table.</p> <p>21 THE COURT: You mean you have to have the vendor item</p> <p>22 table and the item master for it to be a catalog?</p> <p>23 THE WITNESS: Yes, sir.</p> <p>24 Q Let me have PX-108 again. Let me just ask you a question,</p> <p>25 Doctor, about this. Is a vendor associated with the item data</p>

<p>627</p> <p>1 training.</p> <p>2 Q Can you turn to the page that is barcoded 18 which ends</p> <p>3 with a Bates label 491, and there is a heading there called</p> <p>4 prerequisite applications setup. Why is this significant to</p> <p>5 your opinions?</p> <p>6 A As it says, before you can use the Lawson requisitions</p> <p>7 self service application, you must set up other Lawson</p> <p>8 applications. The prerequisite applications affect the way</p> <p>9 processing occurs in the Lawson requisitions self-service</p> <p>10 application. So as I showed in my demonstrative, this sits on</p> <p>11 top of our modules.</p> <p>12 Q I want to turn to the next page and that first bullet</p> <p>13 point.</p> <p>14 A Before you can create requisitions, you must set up the</p> <p>15 requisitions application including requester's requesting</p> <p>16 locations and approval codes if used.</p> <p>17 Q Why don't we turn to page 22 of the document, ends with a</p> <p>18 Bates label 495. There's a heading called setting up the</p> <p>19 purchase order application?</p> <p>20 A At the top.</p> <p>21 Q What did you consider on this page, if anything, when you</p> <p>22 were doing your analysis?</p> <p>23 A The very first sentence. Before you can use the</p> <p>24 application, this is the purchase order application --</p> <p>25 THE COURT: That doesn't say that. It says "before</p>	<p>629</p> <p>1 A Yes.</p> <p>2 Q What, if any, significance does that have with respect to</p> <p>3 the requisition self server module?</p> <p>4 A So these first four paragraphs explain the purpose, and</p> <p>5 then down below are instructions on how to do this. The</p> <p>6 categories task is designed to use UNSPSC, United Nations</p> <p>7 Standards Products and Services Codes. Categories let you</p> <p>8 search for items by category.</p> <p>9 After you import UNSPSC codes, you can assign them to</p> <p>10 items using item master. IC 11.1 is one of these programs.</p> <p>11 The codes have four levels: Segment, family, class, and</p> <p>12 commodity. These levels create an item hierarchy and let you</p> <p>13 search each level for items in the item master file. These</p> <p>14 codes are attached to items on IC 11. That's the item master.</p> <p>15 After you define categories, you can click on a category</p> <p>16 top level to open the segment tree to the product, family,</p> <p>17 class, commodity, branches, and items. You select items at any</p> <p>18 of the levels.</p> <p>19 Q Okay. Is this the same kind of UNSPSC classification</p> <p>20 codes that can be used to do the converting as defined by the</p> <p>21 Court that we saw before in, I believe it was the inventory</p> <p>22 control module?</p> <p>23 A Yes, they are.</p> <p>24 Q So then this is available functionality as part of the</p> <p>25 requisitions self-service application as well?</p>
<p>628</p> <p>1 you use," not "before you can use."</p> <p>2 THE WITNESS: Thank you, Your Honor. Before you use</p> <p>3 the application, you must define purchase order vendors and</p> <p>4 locations.</p> <p>5 Q What, if any, significance did that have to your opinions?</p> <p>6 A That the purchase order and requisition self service have</p> <p>7 to work together, that PO has to be present before RSS can</p> <p>8 work.</p> <p>9 Q Let me also take you back to page 21 of the document which</p> <p>10 ends 494. That is entitled setting up the inventory control</p> <p>11 application?</p> <p>12 A Right.</p> <p>13 Q What, if any, significance on this page for your opinions,</p> <p>14 Doctor, would you like to point out to the jury?</p> <p>15 A The first sentence. Before you set up the requisitions</p> <p>16 application, you must set up the inventory control application.</p> <p>17 Q Thank you. Is that consistent with your understanding in</p> <p>18 the diagram that you put together to illustrate?</p> <p>19 A Yes, it is.</p> <p>20 Q Can we go to page 27 which ends with Bates label 500?</p> <p>21 This page is entitled defining categories optional; do you see</p> <p>22 that?</p> <p>23 A I do.</p> <p>24 Q They are describing or discussing the UNSPSC. Do you see</p> <p>25 that?</p>	<p>630</p> <p>1 A Right. This is part of RSS.</p> <p>2 Q Let me direct you, if I could, Dr. Weaver, to Plaintiff's</p> <p>3 Exhibit Number 109 which is in volume two. Have you seen this</p> <p>4 document before?</p> <p>5 A Yes, I have.</p> <p>6 Q What is it?</p> <p>7 A This document is entitled S3 EDI for supply chain</p> <p>8 management. This was reviewed during the depositions of the</p> <p>9 Lawson personnel.</p> <p>10 Q Let me go to page Bates labeled five of this document that</p> <p>11 ends -- excuse me, barcode five that ends with the Bates label</p> <p>12 618. It's entitled Lawson S3 EDI for supply chain management.</p> <p>13 Do you know what the S3 product is?</p> <p>14 A Sure. It's the Lawson procurement suite.</p> <p>15 Q Can you define that with respect to the modules that</p> <p>16 you've identified in your diagram?</p> <p>17 A Yes; requisitions, purchase order, and inventory control.</p> <p>18 Q What significance is in this particular page of</p> <p>19 Plaintiff's Exhibit 109?</p> <p>20 A The first paragraph explaining what this does. It links,</p> <p>21 or rather it says links your enterprise to its trading partners</p> <p>22 to electronically send transactions such as purchase orders,</p> <p>23 price/catalogs, and invoices electronically.</p> <p>24 Q So using this application, can you receive electronically</p> <p>25 transmitted catalogs from suppliers?</p>

<p>635</p> <p>1 A Yes.</p> <p>2 Q And I'm not going to go through it again because we read</p> <p>3 them at one point, but the jury has them in their glossary.</p> <p>4 And, of course, all the other elements need to be there as</p> <p>5 well. Are we going to be seeing, as we walk through this</p> <p>6 demonstration, the existence of these other elements that you</p> <p>7 described?</p> <p>8 A Yes.</p> <p>9 Q Why don't you go ahead.</p> <p>10 A All right. So Mike is going to play this movie, and</p> <p>11 you'll see there are some waits involved in here, but that's</p> <p>12 just because it's recording exactly what was seen.</p> <p>13 Q Stop here for a second and let me ask you a question here.</p> <p>14 There's a box in the lower right-hand corner. Is that part of</p> <p>15 the Lawson system or not part of the Lawson system?</p> <p>16 A That was part of the system provided, and it's part of the</p> <p>17 realtime capturing software, so you can -- what's showing --</p> <p>18 can you see this? So what you are seeing right now is a clock</p> <p>19 that says we're 12.4 seconds into the movie, and then there's a</p> <p>20 button that if you were on the real laptop, you could click it</p> <p>21 and it would toggle from pause to play to pause to play. We've</p> <p>22 chosen just to let it play.</p> <p>23 Q If we wanted to --</p> <p>24 MR. McDONALD: Your Honor, could I get a</p> <p>25 clarification on which exhibit, and is there a paper version of</p>	<p>637</p> <p>1 A Sure. Exactly. So I'm going to go down and click on</p> <p>2 Lawson portal. Continue. Now, this is one of those waits.</p> <p>3 Okay. We get to the Lawson log-in screen. So we put in the</p> <p>4 user name and password and then click on log in. This will be</p> <p>5 one of those longer waits. You can see the time clicking away</p> <p>6 in the bottom right-hand corner.</p> <p>7 Stop. So now we are at the Lawson home page, and if you</p> <p>8 are familiar with browsers, you see up here, there is the URL</p> <p>9 that we're using. LSF server, that's Lawson server foundation,</p> <p>10 that's what we talked about before. Server.corpnet.lawson.com.</p> <p>11 So we're looking at the portal.</p> <p>12 Q All right, you used the term URL. Can you explain to the</p> <p>13 jurors what you mean by that?</p> <p>14 A Falling back into my vernacular. Universal resource</p> <p>15 locator, so commonly called a web address. Okay, so we can</p> <p>16 continue. Top. Stop. That was stop, not top. Here's another</p> <p>17 one of those drop-down menus. So on the left-hand side, I have</p> <p>18 a menu. One of the top level choices was requisition self</p> <p>19 service. So I'm going into the RSS module, and I'm picking one</p> <p>20 of the activities that is there. This is one of the</p> <p>21 capabilities. All right, so I'm going to click on the shopping</p> <p>22 selection. Continue.</p> <p>23 Stop. So, now we come to the shopping screen. Again, if</p> <p>24 you look up here at the top, you will see there are some</p> <p>25 choices that can be made. These are, again, top levels of what</p>
<p>636</p> <p>1 this one so we know what you are using?</p> <p>2 MR. ROBERTSON: It's going to be Plaintiff's</p> <p>3 Exhibit 376 is the video, and Plaintiff's Exhibit 374 would be</p> <p>4 the hard copy paper capture of the screen shots.</p> <p>5 Q So we're clear, this is like the video playback? We can</p> <p>6 do the stop, forward, reverse by using these tools if we need</p> <p>7 to go back at any time?</p> <p>8 A Well, these tools are for the original capture. Mike and</p> <p>9 I are going to do it manually. I'm going to say stop and</p> <p>10 continue and probably say go back.</p> <p>11 Q We may have to go back because it moves quickly sometimes?</p> <p>12 A Sometimes it's too quick, and sometimes it's too slow.</p> <p>13 Right now we're going to start with a go back, so go back to</p> <p>14 the beginning.</p> <p>15 All right, so as the laptop screen exists, first I'm going</p> <p>16 to bring up the browser. I'm going to use Internet Explorer,</p> <p>17 so here we go. Stop. Now, again, I'm just going to tell you,</p> <p>18 you're going to see some times when not much is happening, but</p> <p>19 this is just a true-to-life recording of exactly what was on</p> <p>20 the screen at the time.</p> <p>21 Okay, so in your ordinary Internet Explorer browser, I've</p> <p>22 clicked on the favorites tab, and one of the favorites that</p> <p>23 I've saved is the Lawson portal.</p> <p>24 Q Is this an example of the drop-down menu you were talking</p> <p>25 about earlier?</p>	<p>638</p> <p>1 will be drop-down menus. I'm going to go click on this</p> <p>2 find/shop, and that's going to give me additional choices.</p> <p>3 Continue.</p> <p>4 Stop. So here are the choices. I can search the</p> <p>5 catalogs, I can do a Punchout. I'm going to do that later.</p> <p>6 Down there at the bottom is categories. So I'm going to go</p> <p>7 down and click on categories, because I want to do a category</p> <p>8 search. Continue.</p> <p>9 Stop. Now, remember with the UNSPSC codes, we said that</p> <p>10 there were four levels: Segment, family, class, and commodity.</p> <p>11 So what is showing here in the category tab, the category</p> <p>12 window, is the first three of a small set of these top level</p> <p>13 categories, these segment categories. So, remember, there</p> <p>14 could have been a hundred of them, 00 to 99, but here, for</p> <p>15 clarity, everyone exchanges those digits for names so that they</p> <p>16 have -- they make sense to humans.</p> <p>17 So my top choice there, live plant and animal material and</p> <p>18 accessories and supplies, that's one of the segment codes.</p> <p>19 Now, I don't know what code it is, 23, 99, I don't know. It</p> <p>20 doesn't matter. It is representative of what is in this very</p> <p>21 broad segment. So I'm going to scroll down and show you the</p> <p>22 others, and then I'm going to come back and pick one in the</p> <p>23 middle. Continue. See, we only had about six there. Stop.</p> <p>24 Q Let me ask you a question about that then. There are only</p> <p>25 six here to illustrate the functionality of it. Does the</p>

<p>639</p> <p>1 Lawson requisition self service you are using here have the</p> <p>2 capability to have more?</p> <p>3 A Absolutely.</p> <p>4 Q How many could it have?</p> <p>5 A It could be a hundred different segments. Each of those</p> <p>6 segments could have a hundred families. They could each have a</p> <p>7 hundred classes. They could each have a hundred commodities.</p> <p>8 Q I noticed you clicked on one of these segments?</p> <p>9 A The one I clicked there in the middle is communications</p> <p>10 and computer equipment and peripherals and components and</p> <p>11 supplies. So you can see how broad a category that segment</p> <p>12 name represents. So what we're going to do now is drill down</p> <p>13 to become finer-grained.</p> <p>14 So having clicked on that top level segment -- continue --</p> <p>15 stop. So underneath the segment is the family. Now, here we</p> <p>16 show that there's very little data in the system we were</p> <p>17 provided. Whereas there could be a hundred different family</p> <p>18 names, there's only one. So due to the paucity of data here,</p> <p>19 I'm going to click the only possibility I've got.</p> <p>20 All right, so I've done the segment. This is the family.</p> <p>21 I'm going to click on the family name, hardware and</p> <p>22 accessories. Continue.</p> <p>23 Stop. So now we're down to the class. There could have</p> <p>24 been a hundred classes, but, again, because there's so little</p> <p>25 data here, there's only two. So as I look at the class, I have</p>	<p>641</p> <p>1 All right, so I'm going to look at these two computers.</p> <p>2 You can see the first line item there is an IBM ThinkPad, and</p> <p>3 it has an item number of 6001. The one below it is a Dell</p> <p>4 Inspiron 8000. It has an item number of 6020. So I'm going to</p> <p>5 go click on the item number, and that's going to get us a</p> <p>6 description of this item.</p> <p>7 Q Before you do that, Doctor, does it have unit measure</p> <p>8 category?</p> <p>9 A Right. Under UOM, you see each.</p> <p>10 Q Does it have cost information?</p> <p>11 A Under cost, the ThinkPad is 2,500. The Dell is 2,000.</p> <p>12 Q Does it have description of the item?</p> <p>13 A It has a description, IBM ThinkPad T20 or Dell Inspiron</p> <p>14 8000 with Intel Pentium processors.</p> <p>15 Q You indicated it had an item number?</p> <p>16 A There is an item number.</p> <p>17 Q And it even provides for the Intel Pentium or the Dell</p> <p>18 Inspiron, the manufacturer?</p> <p>19 A I just covered up the description. Yeah. So not only do</p> <p>20 we have in this case the name of the computer, Dell Inspiron</p> <p>21 8000, we also have a little more descriptive information, that</p> <p>22 it's an Intel Pentium III processor.</p> <p>23 Okay. We'll continue. Oh, and stop. I should also note</p> <p>24 while we're here that over here is the Dell shopping cart, and</p> <p>25 it's obviously empty. It's supposed to be empty --</p>
<p>640</p> <p>1 a choice of computers or monitors and displays. So I'm going</p> <p>2 to go for computers. Continue.</p> <p>3 Stop. Now I'm down to the commodity level. The</p> <p>4 commodities, there should be a lot of them, but because of the</p> <p>5 paucity of data here, we have only one commodity category,</p> <p>6 notebook computers. So I'll click the only choice I've got,</p> <p>7 and then that will list the actual item data that is underneath</p> <p>8 the notebook computers commodity code. Continue.</p> <p>9 Stop. So now we see all of the items in the database that</p> <p>10 have the UNSPSC code for notebook computers, and there's only</p> <p>11 two, okay? Small database.</p> <p>12 Q So I understand, for the segments, there could have been</p> <p>13 thousands, for families there have been --</p> <p>14 A Hundreds.</p> <p>15 Q Hundreds. What is the next level?</p> <p>16 A So you start with segment.</p> <p>17 Q Class?</p> <p>18 A Could be a hundred. Then family -- each of those segments</p> <p>19 could have a hundred, and then each of those families could</p> <p>20 have a hundred classes, and each of the classes could have a</p> <p>21 hundred commodities.</p> <p>22 Q Those commodities, you could have thousands of items?</p> <p>23 A Right. Once you get down to the commodity level, you have</p> <p>24 unlimited number of items that map to that code. Here we have</p> <p>25 two. Okay, it's going to do the job, though.</p>	<p>642</p> <p>1 Q I think you misspoke. I think you said the Dell shopping</p> <p>2 cart.</p> <p>3 A I misspoke. This is the Lawson shopping cart right here</p> <p>4 where it says my cart. And so as I select items, they will</p> <p>5 show up in the shopping cart, but we'll see that. All right,</p> <p>6 so now I'm READY to drill down on the ThinkPad. Continue.</p> <p>7 So I click on that item number. Stop. And this retrieves</p> <p>8 the data in the item master and vendor item table database and</p> <p>9 tells me about the item. So we have an item number, we have a</p> <p>10 description, a unit of measure, a cost.</p> <p>11 We have a source vendor ID, 118, and a source vendor name,</p> <p>12 Office Max. So from observing this information that is</p> <p>13 produced, I know that this IBM ThinkPad has a vendor source of</p> <p>14 Office Max.</p> <p>15 Q Let me stop and ask a question, Doctor. There's a box</p> <p>16 there that says image not available. Does this RSS application</p> <p>17 have the ability to load images of the items offered for sale?</p> <p>18 A It does, and the documentation encourages one to do so.</p> <p>19 But, again, because of the paucity of data, we didn't have any</p> <p>20 item images in the data we were given.</p> <p>21 Q This is how it was provided to us; it could have been</p> <p>22 provided with an image, because the software permits you to do</p> <p>23 that?</p> <p>24 A Right. It could have been chock-full of images, but it</p> <p>25 wasn't. Okay, so I'm going to scroll down and up so you see</p>

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<p>643</p> <p>1 all of the information that was presented to me as the user of 2 the RSS system, and then we'll go back and look at the other 3 Dell computer. So continue. So now I'm going to add that to 4 the cart. 5 Stop. So here in the Lawson shopping cart, I have my IBM 6 ThinkPad T20, item number 6001; quantity, one; unit of measure, 7 each; cost, \$2,500. So I'm going to park this item in the 8 shopping cart, but then I'm going to go back and look at the 9 equivalent items, equivalent in that they had the same UNSPSC 10 code. 11 All right, so we'll continue, and I'll click on this back 12 button over here. So here -- stop. Here is that second line 13 item as we saw before, the Dell Inspiron. So I'm clicking on 14 its item number, and we'll drill down on that and see what 15 information is provided there. Continue. 16 Stop. So similarly to what we saw before, this is the 17 other machine. It's an item -- I wiped it out. Item 6020, a 18 Dell Inspiron 8000 with Pentium III processor, a unit of 19 measure each, and a cost of 2,000. But it has a source vendor, 20 ID code of 124, and a source vendor name of Diablo. 21 So the first computer, the ThinkPad was coming from the 22 Office Max catalog. This is coming from the Diablo catalog. 23 So I stare at that, and I think which of these machines is a 24 better choice for me. I'm cheap, so I'm going to go with this 25 one. So I will add this one to the shopping cart, Lawson</p>	<p>645</p> <p>1 equipment. Stop. Oh, I might also note that the hierarchy 2 tree is being kept for me up here at the top. Here's my 3 segment level, here's my family level. As soon as I click here 4 on my class level, it will appear here and so on. 5 All right, so I'm about to click on laboratory, 6 environmental conditioning equipment for my third category. 7 Continue. 8 Stop. Okay, now, again, we're down to commodities. There 9 could be a hundred of these, but there's not. There's just 10 one. There's one commodity called glove boxes. So when I 11 click on this, I will see all the items in the item master 12 database and the vendor item table that have been encoded with 13 the UNSPSC code for glove boxes. Continue. 14 Stop. Once again, the database is small, so there's only 15 two entries under the commodity heading. Both of these are 16 boxes of sterile surgical gloves, so I'm going to pick one and 17 add that to my Lawson shopping cart. Continue. I'm going to 18 look at it first. Smart shopper. 19 Stop. All right. So I just did a drill-down as I did 20 with the computers. So you see we have an item number, 1036, 21 we have a description, gloves, sterile surgical, size seven. A 22 unit of measure. Here it's case, cost, 400 bucks, source 23 vendor. The ID number is 117, and the source vendor name is 24 Baxter Healthcare. 25 Continue. So scroll down and back up, and add that to my</p>
<p>644</p> <p>1 shopping cart, and delete the other one. So continue. 2 Okay, now stop. So now I have both notebook computers in 3 the Lawson shopping cart, and I'm going to go up here to this X 4 and delete the ThinkPad. Continue. 5 And like all good software, it asks me, do you really want 6 to delete that, and I say, yes. Okay. Stop. So at this 7 point, I have done the UNSPSC code, found two generally 8 equivalent notebook computers, chose one, added it to the 9 shopping cart, added the other one to the shopping cart, 10 deleted the first one. 11 So I've been able to convert one item from one source, the 12 ThinkPad from Office Max, into an equivalent item from another 13 source, the Dell Inspiron here, and having done that, I'm now 14 going to go back and pick another category and find another 15 item to add so that I'll have multiple items in my shopping 16 cart. 17 Okay, so I'm backed out -- because I did that drop-down 18 menu to categories, I'm back at the highest level, the segment 19 level. So continue. Scroll down. Stop. So this time my 20 segment level is laboratory and measuring and observing and 21 testing equipment. Continue. Stop. My family, again, there's 22 only two here, laboratory and scientific equipment, or 23 measuring or observing, or testing instruments and accessories. 24 Continue. 25 So I pick at my family, laboratory and scientific</p>	<p>646</p> <p>1 shopping cart. So here it is, gloves at the top, Dell computer 2 at the bottom. Now stop. I have finished shopping, so I have 3 the information from the database now in the shopping cart. My 4 next goal is to create a requisition. Then I'll need to get 5 that approved, and then I'll need to get that turned into 6 purchase orders. 7 So since the gloves and the Dell came from different 8 vendors, I will need two POs, one to each of those vendors, so 9 I'm going to click on checkout. Continue. All right, saved. 10 Stop. So it gives it a number, 911. So when I come into 11 this system next, I'm going to come in as a manager, and I'm 12 going to look for this order 911 that is existing in the 13 system. I'm going to find it among all other orders, and then 14 I'm going to get it approved. All right, continue. Status 15 needs approval. 16 All right, back to the portal home page, and now I'm going 17 to come in as a manager. Here are some requisitions, but 911 18 is not among them. Stop. Here is the requisition 911, and 19 that's the one I need to have approved. Continue. 20 Stop. So here we pull up the requisition, you see right 21 there, and we have the two line items, the Dell Inspiron and 22 the case of gloves. So I've logged in now as the manager when 23 I clicked on manager, and so here are the actions I can take: 24 Approve, reject, or unrelease, so I'm going to approve these. 25 Continue.</p>

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<p>703</p> <p>1 as to whether that's a multiple catalog availability 2 or a single catalog? 3 A Well, as we just saw when we did our Punchout 4 Staples and Dell, those were two completely separate 5 catalogs on separate websites run by different people. 6 So those are unquestionably separate catalogs. 7 Q Do you have an understanding about whether the 8 '683 patent, for example, requires catalogs to be 9 searched simultaneously? 10 A It does not. 11 Q Did the Court in any of its claim constructions 12 have that requirement? 13 A No, that's not in the claim construction. 14 Q Does the Lawson system have the capability of 15 enabling you to select search first a product catalog 16 and then subsequently select a search in another 17 product catalog? 18 A Yes. 19 Q Do you see that in any of your demonstrations? 20 A Yes, we did. The Bush or Basyx. 21 Q In the demonstration in Punchout, did we see that 22 ability to select those product catalogs? 23 A Yes, we did because we saw that in Dell and in 24 Staples. 25 Q Why don't we talk a little bit about searching for</p>	<p>705</p> <p>1 A Yes. We saw that in the documentation with the PO 2 536 program. 3 Q Did you see representation that Lawson said they 4 could import multiple catalogs? 5 A Yes, we did. 6 Q So I did want to address this searching the 7 selected product catalogs using Lawson's keyword 8 search. You're familiar with that? 9 A Yes. 10 Q Are you familiar with Lawson's contention that it 11 searches the entire item master and therefore the 12 Lawson systems don't, and its search engine, does not 13 search only selected portions of catalogs, but rather 14 the entire item master? 15 A I'm aware of that, but I disagree with that. 16 Q Why do you disagree with that? 17 A Because the way that the system is built it uses a 18 search index. If you think about building a complex 19 system, you would never build it such that you had to 20 search through every single item in order to match a 21 search query. It would take forever if the database 22 was of any size. So that's not the way relational 23 databases get built. 24 Instead there's a search index, and so like the 25 index of a book, you have keywords, and they point to</p>
<p>704</p> <p>1 selected product catalogs using the Lawson keyword 2 index? 3 THE COURT: Excuse me. Before you do that, 4 are you saying in your view item master is not a 5 single catalog but is a multiple catalog because it 6 has imported into it all number of parts of other 7 catalogs? 8 THE WITNESS: Well, let me just be clear. 9 THE COURT: Yes. 10 THE WITNESS: If the item master is built by 11 importing multiple vendor catalogs, then in my opinion 12 is that database contains multiple vendor catalogs. 13 THE COURT: But what if it is built by 14 importing part of multiple catalogs, parts of 15 catalogs? 16 THE WITNESS: In my opinion, it's still 17 multiple catalogs. 18 THE COURT: I just want to know -- and it's 19 because in those instances you think it's a function 20 of importation? 21 THE WITNESS: Yes, sir. 22 THE COURT: All right. 23 BY MR. ROBERTSON: 24 Q Does the Lawson system have the capability of 25 importing multiple vendor catalogs?</p>	<p>706</p> <p>1 where in the database those items reside. 2 So if I do a keyword search for Dell, I look it up 3 in the index, and that tells me where the Dell items 4 are, and I only look at those. 5 Q Do you have any demonstratives that you prepared 6 to help illustrate this point? 7 A I do. 8 Q Could we go to 09 at page 15. Okay. Here you 9 have a definition of an index from Webster's New World 10 Computer Dictionary. What significance here should we 11 be focused on as you talk about this computer search 12 index that's being utilized? 13 A This part here. When searching or sorting the 14 database, the program uses the index rather than the 15 full database. Such operations are faster than sorts 16 or searches performed on the actual database. 17 Q As a computer scientist, is using an index in 18 order to search a relational database something that 19 is utilized in order to make those faster searches? 20 A Absolutely. 21 Q Do you know how the Lawson's system search index 22 is created? 23 A Yes. 24 Q What is that? 25 A There's a process by which keywords are defined</p>

<p>707</p> <p>1 that are going to become searchable. So there's a</p> <p>2 keyword search setup program that you run, and then</p> <p>3 after you've defined what keywords are going to be</p> <p>4 searchable and you've got your database loaded, and</p> <p>5 the item master is now full of data, you run the</p> <p>6 keyword search load program. That builds the index.</p> <p>7 And now until you have changed the database, you</p> <p>8 have got an index into all the searchable keywords</p> <p>9 that -- all of the keywords that were chosen to be</p> <p>10 searchable.</p> <p>11 Q Are some of those keywords like item description,</p> <p>12 item number, classification code that you've been</p> <p>13 addressing already?</p> <p>14 A Yes, they are.</p> <p>15 Q Which database tables is the search index built?</p> <p>16 A I'm sorry. Say that again.</p> <p>17 Q Sure. From which database tables is the search</p> <p>18 index built?</p> <p>19 A The item master. Well, and the vendor item table,</p> <p>20 too.</p> <p>21 Q Once the user has selected the field of the item</p> <p>22 data that are to be searchable, what is the next step</p> <p>23 in building this index?</p> <p>24 A So after you have chosen your keywords, you have</p> <p>25 to load them all, and then you -- the computer system,</p>	<p>709</p> <p>1 A The first two paragraphs. You can search the</p> <p>2 catalog, which will search for items in your item</p> <p>3 master or vendor items. It also allows you to search</p> <p>4 for keywords for up to 29 fields based on your set up.</p> <p>5 You can also search based on categories which can use</p> <p>6 the UNSPSC code categories. And I think we've heard</p> <p>7 the rest of that before.</p> <p>8 Q We've gone over that. Let me direct you then to</p> <p>9 page 12 of the document. Is this a Lawson keyword</p> <p>10 search setup proposal?</p> <p>11 A Well, this is the training guide and --</p> <p>12 Q This is teaching the customers how to set up the</p> <p>13 keywords?</p> <p>14 A Yes, it is.</p> <p>15 Q What's the next page?</p> <p>16 A Keyword search load.</p> <p>17 Q What is that?</p> <p>18 A So that was the second program that you have to</p> <p>19 run. The first one, the keyword search set up, this</p> <p>20 is where you choose which of the 29 different fields</p> <p>21 will become searchable. So after you have got them</p> <p>22 chosen, and you've got your item master database</p> <p>23 loaded, then you run the keyword search load, and it</p> <p>24 builds the index.</p> <p>25 Q Then if you will turn to page 29. There's a slide</p>
<p>708</p> <p>1 the keyword search load program, builds this index</p> <p>2 that is search engine then uses thereafter.</p> <p>3 Q Can you take a look at Plaintiff's Exhibit</p> <p>4 No. 136. It's in Volume III. It's entitled,</p> <p>5 "Requisition Self Service 8.1, 9.0."</p> <p>6 A Yes.</p> <p>7 Q What is this exhibit, if you know?</p> <p>8 A This is a training program for requisition self</p> <p>9 service. This particular one is a copy of what a</p> <p>10 human trainer would be using in terms of slides and</p> <p>11 notes. So if you're familiar with Microsoft</p> <p>12 PowerPoint, it has a notes feature. So here is the</p> <p>13 slide itself, and below it are the notes. So if I</p> <p>14 were a trainer training you as an RSS class, I would</p> <p>15 be showing you this picture up here, and then this</p> <p>16 would be my reminder text of what I wanted to tell you</p> <p>17 about the slide that I'm showing you. Instead of</p> <p>18 having an audio recording, you've got words.</p> <p>19 Q Is this a presentation that Lawson gives to train</p> <p>20 its customers?</p> <p>21 A Yes.</p> <p>22 Q Why don't we go to page 3 of the document, if we</p> <p>23 could. It's Bates label is 687.</p> <p>24 A Right.</p> <p>25 Q What would you like us to focus on here?</p>	<p>710</p> <p>1 there that says "creating a requisition by searching</p> <p>2 the catalog"?</p> <p>3 A Yes.</p> <p>4 Q What's being depicted there?</p> <p>5 A So this is something that we have seen. When I</p> <p>6 did the category search and picked items and built a</p> <p>7 requisition. So it says down here, When using the</p> <p>8 search catalog task, you enter the value you want to</p> <p>9 look for in the search field. As soon as you type in</p> <p>10 the third letter, the system begins searching for the</p> <p>11 matching keywords and displays the result as a drop</p> <p>12 down list.</p> <p>13 Keywords exist because you enable certain fields</p> <p>14 as searchable in this IC00.5 program and run IC800 to</p> <p>15 build keywords from these fields.</p> <p>16 So that's the setup and load. IC800 is the</p> <p>17 keyword load.</p> <p>18 Q So what if anything do the pages of this document</p> <p>19 have with respect to your understanding of how the</p> <p>20 Lawson system or whether the Lawson system uses a</p> <p>21 search index to conduct its searches?</p> <p>22 A Well, it absolutely does such that it need not</p> <p>23 search the entire database. That's what keyword setup</p> <p>24 is about and how a keyword load turns that into an</p> <p>25 actual index.</p>

<p>711</p> <p>1 Q So once you have enabled the keyword terms and you</p> <p>2 built the search index, how does the Lawson search</p> <p>3 engine conduct a search of the item data in the</p> <p>4 database?</p> <p>5 A So if I type in a word into a text box, say Dell,</p> <p>6 and engage the search engine, it goes to the search</p> <p>7 index. It looks up Dell. It finds records in the</p> <p>8 database that match the keyword Dell. And then it</p> <p>9 extracts that data from the database and presents that</p> <p>10 to me on the screen.</p> <p>11 Q Do you have a demonstrative you prepared to try</p> <p>12 and illustrate how this search index operates?</p> <p>13 A I do.</p> <p>14 Q What's being illustrated here, sir?</p> <p>15 A Okay. So up here at the top we have the text box,</p> <p>16 which is the search query. I don't know where that</p> <p>17 popping is coming from.</p> <p>18 THE COURT: That's because you, like some</p> <p>19 witnesses, but not all, articulate your P's in a</p> <p>20 particular way at a particular length from the</p> <p>21 microphone, and there isn't anything that we've been</p> <p>22 able to do about it. And it's not your fault. It's a</p> <p>23 function of the way things are.</p> <p>24 THE WITNESS: Thank you, Your Honor.</p> <p>25 THE COURT: It's annoying, but --</p>	<p>713</p> <p>1 the user-defined field for manufacturer, like Dell or</p> <p>2 Hewlett-Packard or Gateway, for each of those I have</p> <p>3 pointers into the database that tell me where I will</p> <p>4 find a record, a product, in which the Dell keyword</p> <p>5 was located in the user-defined field for</p> <p>6 manufacturer.</p> <p>7 Likewise, for the item description fields, if I've</p> <p>8 got a database that contains keywords like keyboard</p> <p>9 and mouse and monitor, every time a descriptive term</p> <p>10 is found that is searchable for item description like</p> <p>11 keyboard, in this database there are pointers from the</p> <p>12 index into the database that say where that item is</p> <p>13 found.</p> <p>14 So the way this then works is when I put in Dell</p> <p>15 and monitor, the search engine goes to the search</p> <p>16 index, finds the keyword Dell, finds all of the places</p> <p>17 that the keyword Dell would appear in the database.</p> <p>18 In this case its locations are 10, 20, 25, 26, 27 and</p> <p>19 28.</p> <p>20 Then it would look for the next keyword in the</p> <p>21 query box. That's monitor. It would look up all of</p> <p>22 the places in the database where monitor appears as</p> <p>23 keyword. And that's 15, 16, 17, 19, 20, 21, 22, 23,</p> <p>24 25 and 27.</p> <p>25 Then having found where the records containing the</p>
<p>712</p> <p>1 THE WITNESS: I would have worried about that</p> <p>2 all night.</p> <p>3 THE COURT: Well, don't.</p> <p>4 MR. McDONALD: As long as he doesn't use the</p> <p>5 T sound for the rest of the testimony, it's fine.</p> <p>6 THE COURT: No, it's a P, generally.</p> <p>7 Does this have an exhibit number?</p> <p>8 MR. ROBERTSON: No, Your Honor. It's simply</p> <p>9 demonstrative.</p> <p>10 THE COURT: All right.</p> <p>11 A So we have our keywords at the top, our query</p> <p>12 text, and for this example I want to look for the</p> <p>13 keywords Dell and monitor. We'll assume that we have</p> <p>14 enabled at least two fields, two keyword fields to be</p> <p>15 searchable. One of them would be a user-defined field</p> <p>16 for the manufacturer. We haven't actually talked</p> <p>17 about user defined fields yet, but this is part of the</p> <p>18 Lawson product. So a user defined field or</p> <p>19 manufacturer has been determined to be searchable. It</p> <p>20 has been declared to be searchable. And a second</p> <p>21 field, the item description, which is one of the</p> <p>22 fields, one of the 29 fields supported by Lawson, that</p> <p>23 one has also been declared to be searchable.</p> <p>24 Now, after I do the search load and I build my</p> <p>25 index, then what I have is for each of the entries in</p>	<p>714</p> <p>1 keyword Dell are located and where the records</p> <p>2 containing the keyword monitor are located, then we do</p> <p>3 the intersection of those. That is, from those two</p> <p>4 lists of numbers, we find where the numbers are</p> <p>5 exactly the same.</p> <p>6 So in my example here, 25 and 27 are the database</p> <p>7 records that contain both the keywords Dell and</p> <p>8 monitor.</p> <p>9 So I go fetch records 25 and 27. And that's what</p> <p>10 I display to the user. So I don't search the whole</p> <p>11 database. I just the index to search selected parts.</p> <p>12 THE COURT: Mr. Robertson, what is this</p> <p>13 testimony related to? We had that at the beginning.</p> <p>14 Now we've had a lot of testimony, and I'm confused a</p> <p>15 little bit, and the jury may be, about what exactly</p> <p>16 this line relates to. Does it have to do with whether</p> <p>17 there's a search of a single catalog or not? Is that</p> <p>18 what we're still on?</p> <p>19 MR. ROBERTSON: No, Your Honor. There are</p> <p>20 some claims that say you have to search portions of</p> <p>21 the database or search among the selected catalogs.</p> <p>22 And so in order to search portions of the database,</p> <p>23 you need a search index. Lawson contends that the</p> <p>24 index is -- that the search searches the entire</p> <p>25 database all the time. So, therefore, they can't</p>

<p>723</p> <p>1 start out with broad categories and narrow our search</p> <p>2 in order to arrive at the object of what we want to</p> <p>3 purchase, for example, in this configuration of</p> <p>4 electronic sourcing system; is that right?</p> <p>5 A Right. So an example would be if my first</p> <p>6 predetermined criteria was Dell, I could select a</p> <p>7 subset of the catalogs that contain an item from Dell,</p> <p>8 and if my second criteria was Dimension 8100, which is</p> <p>9 a particular Dell model, I could look within those</p> <p>10 catalogs for those items that are Dell Dimension</p> <p>11 8100s.</p> <p>12 Q Are there some of the catalog selection protocols</p> <p>13 described there? What is your understanding of what a</p> <p>14 catalog selection protocol is? First of all, the</p> <p>15 Court has defined what a protocol is. So let's just</p> <p>16 that your definition. Do you recall what that is?</p> <p>17 A For protocol?</p> <p>18 Q Yes. It's on the first page.</p> <p>19 A A procedure.</p> <p>20 Q So let's call a catalog selection procedure, if</p> <p>21 you will, since that is the Court's definition, and</p> <p>22 can you tell us your understanding of that element?</p> <p>23 What is it?</p> <p>24 A So there's a user interface that allows me to</p> <p>25 input a criteria that's going to select less than all</p>	<p>725</p> <p>1 Q It's been represented to me it's very short.</p> <p>2 Would you like me to proceed, Your Honor. It's</p> <p>3 Plaintiff's Exhibit 364 is the video and Plaintiff's</p> <p>4 Exhibit 363 are the corresponding hard copy screen</p> <p>5 shots.</p> <p>6 A Stop.</p> <p>7 Q Dr. Weaver --</p> <p>8 A Are you ready?</p> <p>9 Q Maybe we should make an effort not to stop as much</p> <p>10 so we can have more of a narrative if the Court would</p> <p>11 permit.</p> <p>12 THE COURT: Whatever he wants to do. I think</p> <p>13 he was waiting for you to do a question.</p> <p>14 Q Can we proceed with the demonstration?</p> <p>15 A We can. All right.</p> <p>16 Q Can you preview it for the jury and tell us what</p> <p>17 we're going to see here?</p> <p>18 A Yes, we're going to see searching for the first</p> <p>19 criteria of Dell. And then from those catalogs, we'll</p> <p>20 see that there are multiple vendors for Dell. And</p> <p>21 then we'll refine the search with a Dimension 8100,</p> <p>22 and we'll find that there are multiple vendors for a</p> <p>23 more specific search inquiry, and that satisfies the</p> <p>24 elements of Claim One of the '516.</p> <p>25 THE COURT: What are the exhibit numbers?</p>
<p>724</p> <p>1 of the catalogs.</p> <p>2 Q There was criteria we talked about. It could be</p> <p>3 the first set of criteria. These attributes we've</p> <p>4 been talking about such as vendor name and</p> <p>5 manufacturer number, vendor number, textural</p> <p>6 description?</p> <p>7 A Right. All of those I mentioned as examples of a</p> <p>8 first set of predetermined criteria.</p> <p>9 Q Then you can use that second set of criteria that</p> <p>10 include those in the first set that then refine the</p> <p>11 search?</p> <p>12 A Correct.</p> <p>13 Q This last element is search program. Search</p> <p>14 program relying on said second set of criteria to</p> <p>15 select specific items from the catalogs for said</p> <p>16 catalogs determined from the catalog selection</p> <p>17 protocol. What is going on there?</p> <p>18 A So you need a search program that uses that second</p> <p>19 criteria in order to find specific items within the</p> <p>20 catalogs that were sub selected by your choice of the</p> <p>21 first criteria.</p> <p>22 Q Do you have a demonstration to illustrate whether</p> <p>23 or not the Lawson system performs in a manner that is</p> <p>24 implicated by Claim One of the '516 patent?</p> <p>25 A Yes.</p>	<p>726</p> <p>1 MR. ROBERTSON: 364 is the video and 363 are</p> <p>2 the hard copies.</p> <p>3 A Let's go. Pick the browser. Pick the favorite.</p> <p>4 Pick the portal.</p> <p>5 Q Don't go so fast, Doctor, that we lose the import</p> <p>6 of the point you're trying to make?</p> <p>7 A I have contradictory instructions.</p> <p>8 Q I apologize.</p> <p>9 A This part you have seen before. So no problem.</p> <p>10 We're waiting for the portal to load. Okay. We're</p> <p>11 there. Some requisition self service, shopping, and</p> <p>12 from our drop down menu we'll now pick search catalog.</p> <p>13 Stop.</p> <p>14 So here is the query text box into which I am</p> <p>15 going to put the first predetermined criteria.</p> <p>16 Continue.</p> <p>17 THE COURT: Excuse me. What do you</p> <p>18 understand the catalog that's being searched in the</p> <p>19 drop down when it says "search catalog"?</p> <p>20 THE WITNESS: Well, in this case --</p> <p>21 THE COURT: Where is it going to search?</p> <p>22 THE WITNESS: In this case it's searching the</p> <p>23 database of item master and vendor table and, this</p> <p>24 contains all the catalogs that are in the internal</p> <p>25 database.</p>

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1 MR. ROBERTSON: I don't know who he's going
2 to question about it.

3 THE COURT: I'm sure he's going to question
4 Dr. Weaver based on what he said. Not because I'm
5 prescient or anything.

6 MR. ROBERTSON: I guess I don't have an
7 objection to that.

8 THE COURT: Well, good then. We solved
9 something.

10 Raise the blinds so that in the morning it
11 will be open.

12 All right. I think that's everything. And
13 you don't expect to finish tomorrow, is that right,
14 Mr. Robertson? You don't expect to finish tomorrow,
15 is that what your situation is?

16 MR. ROBERTSON: I do not, sir. I expect Mr.
17 McDonald might have a half an hour or 45 minutes of
18 cross-examination.

19 THE COURT: If you ask your questions bullet
20 points, 30 minutes is plenty. Once you get beyond
21 that, the expert bets you is generally what happens.

22 All right. Okay. So we're not going on
23 Monday. You're going back on Tuesday. Thank you very
24 much. Hope you feel better, all of you. Don't bring
25 anything else up here.

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2 (The proceedings were adjourned at 5:15 p.m.)

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2011.01.07 Trial Transcript Day 4 1/7/2011 3:42:00 PM

<p>741</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 7, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>743</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp, and Mr. David Young represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, sir. 12 THE COURT: Good morning. Good morning, ladies and 13 gentlemen. I was informed by the clerk that you all needed to 14 know the procedure for asking questions, and if you have 15 questions, it's all right. 16 I think the best way to do this is for you to write 17 your question out and then send it up to Mr. Neal, and he'll 18 give it to me, because there's some kind of questions that, 19 perhaps, are better -- I will tell you immediately, I can't 20 answer that or we can't get into that. 21 Others -- and I found this to be the case most of the 22 time. Other questions are very helpful to the lawyers to have, 23 because if you have -- you are the ones who have to decide the 24 case, and if you have a question, they need to know it and need 25 to work out a way to get the information to you through their</p>
<p>742</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>744</p> <p>1 questions. 2 So if you feel like you have a question, you can 3 write them out, send them to me, and I'll take them and look at 4 them. Unless it's something that I can't allow, we'll work out 5 a way to get you the information that you need. 6 You all look like you're not as drained as you were 7 when you left yesterday afternoon. I feel the same way, so 8 let's get a fresh start. Let's go ahead, Mr. Robertson. 9 MR. ROBERTSON: Thank you, Your Honor. Good morning. 10 11 ALFRED C. WEAVER, 12 a witness, called by the plaintiff, having been previously 13 duly sworn, testified as follows: 14 DIRECT EXAMINATION 15 BY MR. ROBERTSON: (resuming) 16 Q Good morning, Dr. Weaver. 17 A Good morning, Mr. Robertson. 18 Q I'd like to start out looking at Plaintiff's Exhibit 19 Number 219, if I could, sir, in binder number five. Before we 20 get there, I have a few preliminary questions. 21 Do you know whether or not Lawson provides services to its 22 customers to assist them in importing vendor catalog data into 23 its item master? 24 A Yes, I do. There was witness testimony to that from the 25 customers.</p>

<p>757</p> <p>1 A I do.</p> <p>2 Q Let's turn to the next page. These are, again, activities</p> <p>3 and responsibilities for particular tasks that need to be</p> <p>4 accomplished in order to perform this statement of work for the</p> <p>5 Deaconess Health System; is that right?</p> <p>6 A That's right.</p> <p>7 Q What, of significance, would you like to point out here?</p> <p>8 A So at the top, data migration workshops are a Lawson</p> <p>9 responsibility, and the description over on the right says that</p> <p>10 the workshops will define the data migration process and the</p> <p>11 mapping required.</p> <p>12 And then two down from that, the task or the activity is</p> <p>13 transform data. That's a Lawson responsibility, and a</p> <p>14 description is that the legacy data is transformed into the new</p> <p>15 database structure. And there at the bottom of the page is</p> <p>16 live migration. That's a Lawson task, and the description is</p> <p>17 live data migration.</p> <p>18 So that's taking the real production data in the</p> <p>19 non-Lawson system and legacy system and moving that into the</p> <p>20 Lawson system to make a production system, one that's up and</p> <p>21 running.</p> <p>22 Q So when you say production system, you've now taken the</p> <p>23 old data, including catalog data, migrated over to the new item</p> <p>24 master in the Lawson system, and then assisted the customer in</p> <p>25 getting that up and functional?</p>	<p>759</p> <p>1 A I am.</p> <p>2 Q I want to direct you to binder one. So my first question</p> <p>3 is, who typically performs that installation and implementation</p> <p>4 of a system that utilizes the procurement Punchout?</p> <p>5 A That would be Lawson.</p> <p>6 Q Did you review any Lawson testimony with respect to that?</p> <p>7 A Yes, I did. The Lawson witnesses said that it was very</p> <p>8 common for the Lawson personnel to implement the procurement</p> <p>9 Punchout system.</p> <p>10 Q Have you reviewed any documents that would confirm that?</p> <p>11 A Yes, I have.</p> <p>12 Q Why don't you take a look at Plaintiff's Exhibit</p> <p>13 Number 103. Have you seen this document before?</p> <p>14 A Yes, I have.</p> <p>15 Q And what is it?</p> <p>16 A So this is a list of frequently asked questions -- that's</p> <p>17 the FAQ -- with regard to procurement Punchout, and this was</p> <p>18 written by a Lawson employee.</p> <p>19 Q And can you turn to page -- let me -- prefatory question.</p> <p>20 So a Lawson employee is putting together a document that</p> <p>21 proposes frequently asked questions during this procurement</p> <p>22 Punchout functionality you described?</p> <p>23 A The idea here is Lawson knows what questions are</p> <p>24 frequently asked, so they prepare a list of questions and</p> <p>25 answers so that they can easily disseminate answers to</p>
<p>758</p> <p>1 A Yes, to make it fully operational.</p> <p>2 Q Can we go to page ten of the document. Again, there's a</p> <p>3 number of what are called interface activities; do you see that</p> <p>4 on the chart blow there?</p> <p>5 A Yes, I do.</p> <p>6 Q What, if anything, does this have for significance for</p> <p>7 your opinions?</p> <p>8 A So these are the activities that are going to be necessary</p> <p>9 to integrate the system. By integrate, we mean integrate the</p> <p>10 procurement suite with the financial and accounting information</p> <p>11 or with the financial and accounting software that's part of</p> <p>12 the Lawson system.</p> <p>13 So focusing on the activities that are of relevance to us,</p> <p>14 in the fourth line we have, technical design doc,</p> <p>15 documentation. That's the responsibility of Lawson. Two below</p> <p>16 that, the activity is develop, and the description or -- excuse</p> <p>17 me -- yeah, it is the description over on the right-hand</p> <p>18 column. Lawson will develop the interfaces defined in the</p> <p>19 scope. Blow that unit test, and below that deliver. Both the</p> <p>20 unit test and deliver are Lawson responsibilities.</p> <p>21 Q Doctor, that's all I have with respect to that document.</p> <p>22 So I'd like to talk to you briefly about this procurement</p> <p>23 Punchout application and who performs the installation and</p> <p>24 implementation of that module. Are you familiar with that,</p> <p>25 sir?</p>	<p>760</p> <p>1 frequently asked questions.</p> <p>2 Q Why don't you turn to page six of this document. So the</p> <p>3 questions that are being formed here are by Lawson that they</p> <p>4 feel are typical or that are frequently asked by their</p> <p>5 customers?</p> <p>6 A That's right.</p> <p>7 Q What is the question Lawson identifies is frequently asked</p> <p>8 at the top of page six?</p> <p>9 A The top question is, who typically performs the</p> <p>10 installation, and the answer is Lawson Professional Services.</p> <p>11 Q Thank you, sir. That's all I have with respect to that</p> <p>12 document.</p> <p>13 Doctor, you had another demonstration that you wanted to</p> <p>14 show, and in this demonstration, is this the demonstration in</p> <p>15 which we were able to, with the assistance of a Lawson</p> <p>16 employee, load additional item data to be able to show fuller,</p> <p>17 more robust functionality?</p> <p>18 A Yes, it is.</p> <p>19 Q This is Plaintiff's Exhibit Number 380, and the hard copy</p> <p>20 screen shots would be Plaintiff's Exhibit Number 379. So would</p> <p>21 you please explain to the jury what's going on in this capture</p> <p>22 of a process operating on the Lawson demonstration system?</p> <p>23 A Sure. We'll just play this, and I'll narrate it as we go.</p> <p>24 Q If you need to stop at any appropriate point, fine. If</p> <p>25 you want to skip over some of the things that are not at issue</p>

<p>761</p> <p>1 in the case, like the approval process or work process flow, 2 that's fine. 3 A Okay. All right, Mike, let's begin. We launch the 4 browser and go to the portal. We've seen the login before. 5 We're at the home page, and we'll go to requisition 6 self-service and choose shopping. Find/shop tab, and from that 7 drop-down menu we choose the categories. You saw these 8 high-level segment categories before. 9 Stop. This time, you will notice there are more of them, 10 and that's because additional data was loaded in this version 11 of the demonstration. 12 Okay, in the middle of that list is lighting and 13 electrical accessories and supplies, so I'll scroll down the 14 list and go back and choose that high level segment category. 15 Continue. 16 So here's our second level, lamps and light bulbs; our 17 third level, lamps; and our fourth level, which is the 18 commodity, that is halogen lamps. So stop. So now we have a 19 list of all the items in the database that are halogen lamps. 20 Continue. 21 We scroll through the list, choose one, and this is a 22 lamp -- stop. This is a lamp. So that we can remember what it 23 is, it's a 120-watt halogen lamp, and it's available from the 24 vendor ^ Granger. Continue. Add that to my shopping cart. Go 25 back. Scroll through the list, choose another lamp, drill down</p>	<p>763</p> <p>1 A That's what we're illustrating here. Okay, so continue. 2 So we punch out to Dell, go full screen and shop by brand. So 3 at the Dell site, we'll see a list of brands, of products that 4 they carry, and it's a long list. 5 We'll just quickly scroll through some of it, and we'll 6 shop by Kensington brand. So here are some Kensington 7 products. I'll look for carrying cases. So I want a case for 8 my laptop. I'll scroll through these, look at a second page, 9 choose this one, a counterbalance laptop roller. Stop. 10 Q Let me ask you this, Dr. Weaver, while you stopped: Are 11 we actually at the Dell commercially available website? 12 A No. This is the special Dell site that's been created for 13 this customer. 14 THE COURT: Dell or Kensington? 15 THE WITNESS: Dell is the site, and Kensington is the 16 brand of carrying case that Dell is selling. 17 THE COURT: Dell sells Dell and others including 18 Kensington, and they are on this site. 19 THE WITNESS: Dell sells, of course, many items and 20 many brands, but they are all on the Dell site, yes. 21 Q How do we know that this is the Dell site? I see it also 22 has the Lawson logo at the top. What are we seeing here that 23 tells us we're not at the Dell commercially available site but 24 rather some site that Lawson is making available to the 25 customer?</p>
<p>762</p> <p>1 on that, stop. 2 And so that we can tell the difference, this one is a 3 150-watt lamp. So I've done some comparison shopping here. I 4 have searched by categories. I found a number of lamps which 5 are generally equivalent. I chose one, a 120-watt one, and now 6 I change my mind, and I'm going to choose the 150-watt lamp. 7 Notice that this is available from a different vendor. 8 This one is from ^ Gexpro. Continue. So I add it to my 9 shopping cart. There it is at the top, and I delete the 10 120-watt lamp at the bottom of the shopping cart. 11 So I'll go back to the drop-down menu, and now I'll do 12 Punchout. I'll punch out to Dell. 13 Q Let me just stop you there. You went to an internal 14 catalog database? 15 A The first halogen lamps that we saw were all in the 16 internal database. 17 Q And now you're going to an external catalog database? 18 A This is the external catalog at the special Dell site. 19 Q So the Lawson system has the ability to both search the 20 internal catalog database and add items to a requisition, and 21 then it can also, in the same process, punch out and go to an 22 external catalog database in order to search a catalog and 23 retrieve items? 24 A That's right. 25 Q Is that what you are illustrating?</p>	<p>764</p> <p>1 A When we look at that URL, universal resource locator web 2 address at the top, we start at the 3 lsfsrver.corpnet.lawson.com. 4 Q LSF, does that stand for Lawson System Foundation server? 5 A Yes, it does. 6 Q That's the foundational software that's necessary to have 7 this S3 procurement software run on top of? 8 A Right. That was the bottom yellow block in my 9 demonstrative. Then as we look to the right of that, we see 10 we're being redirected to this special website which is 11 signin.dell.com/dellogin/port. I'm sorry, that was portal, 12 /login.ASPX. So this is running software that loads this Dell 13 site. 14 So we have now gone to the Kensington counterbalance 15 laptop roller, but in looking at the catalog description, it 16 says, temporarily out of stock, please check back soon. So I 17 need my cases sooner than that, so I'm going to get a different 18 laptop case. So, continue. 19 So I'll go up to rollers. So in the special Dell site, 20 I'm looking at roller cases. Here is one from Case Logic, so I 21 drill down on that. Stop. So now I have the description, I 22 have the manufacturer part number, I have the Dell part number, 23 I have the UNSPSC code that I used, and now that I look at the 24 information on availability, it says usually ships within 25 24 hours. So this case is available in inventory as opposed to</p>

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<p>765</p> <p>1 the previous one that was not. So this case is satisfactory, 2 so I'll choose this one. So continue. 3 I'll add it to my Dell shopping cart. So here's that 4 description. I'll change the quantity to three. I'll create 5 the order, and I'll do the trade compliance. Continue. So 6 here we have the verify and submit. So there is my case, 7 quantity three. That's all right, so I'll submit the order. 8 Stop. So now that I've submitted that order, I have 9 checked out of the Dell site, and here in my Lawson shopping 10 cart I have three roller cases and one incandescent halogen 11 lamp. Continue. So I'm going to check out. I guess I'm going 12 to look at the lamp again. Okay. 13 So here is the detail on the lamp, and -- stop. If you 14 will recall, this one came from Gexpro. Continue, and I'll 15 look at the detail on the laptop cases. So there's my rolling 16 laptop case, and this comes from the Punchout site, from Dell 17 computer. 18 All right. So I'm satisfied with this, so I check out, 19 and now this is saving the Lawson shopping cart into temporary 20 storage where I can turn it into a requisition and then into a 21 purchase order. So back to the portal. You've seen the 22 approval before. I find my requisition number 940. There's my 23 halogen lamp and my three roller cases, so I approve that. 24 Then I'll run that PO 100 program. 25 I give it a job description, I fill in this required</p>	<p>767</p> <p>1 you may have touched on this yesterday, but is there a module 2 that Lawson provides that permits you to -- a program that 3 permits you to automatically upload that UNSPSC classification 4 schema? 5 A Yes, there is. 6 Q What inventory module -- excuse me. What module does that 7 come with? 8 A Inventory control. 9 Q Is that one of the core modules that you have to have in 10 order to do this procurement process? 11 A Right. It's one of the three in my blue box. 12 Q Does Lawson tell the customers where it can obtain these 13 codes? 14 A Yes. It tells you the website to go to. 15 Q And does Lawson have a program in that inventory control 16 where you can automatically download those? 17 A Yes, it does. 18 Q I'd like you -- well, let me as you this: Have you 19 reviewed documents explaining how these UNSPSC codes work in 20 the procurement process? 21 A I certainly have. 22 Q Could I ask you to go to Plaintiff's Exhibit Number 11 23 which is in volume one? Now, at the top of this, there's an 24 organization called Grenada Research; do you see that? 25 A I do.</p>
<p>766</p> <p>1 information. Don't need the filters. Now we'll submit this 2 job. The job name RQ 940 is running. I go to the print 3 manager, I get the requisition -- the purchase order and -- 4 stop. 5 Here at the top of the purchase order we have the 6 information on the buyer, Metropolis Medical Center. Continue. 7 Stop. So here is our roller laptop case, quantity three 8 coming from Dell Computer, purchase order released. Continue. 9 Stop. And so here then is our second item, the incandescent 10 halogen lamp. It's coming from Gexpro, quantity one, PO 11 released, and the report is complete, two purchase orders 12 created. That's the end. 13 Q Doctor, in this process in which you searched among 14 product catalogs and an internal catalog database, and you went 15 to an external catalog database at the Lawson Punchout partner 16 Dell, at any time, have you left the Lawson system while doing 17 that? 18 A Never. 19 Q Now, Doctor, you talked a little bit about the UNSPSC 20 classification coding yesterday for finding items of general 21 equivalents that could be substituted for each other; you are 22 familiar with that? 23 A Yes. 24 Q I don't want to go through the whole segment and family 25 and class and commodity code again, but I do want to ask you --</p>	<p>768</p> <p>1 Q Is that associated with Lawson in any way? 2 A No. 3 Q So this is some independent third party who is going to 4 tell us about using UNSPSC coding? 5 A That's right. 6 Q It's called a white paper. What's a white paper, if you 7 know? 8 A A white paper is a statement of position, so it's what you 9 know or what you think about a subject. It's intended to 10 educate. 11 Q Underneath there, there's a -- what does it say as to 12 these UNSPSC codes? 13 A So the white -- the topic of the white paper is why coding 14 and classifying products is critical to success in electronic 15 commerce. 16 Q Can you go to page five of this exhibit. There's a 17 heading right in the middle called, for finding and purchasing; 18 do you see that? 19 A I do. 20 Q There's a table that says, classifying products and 21 services supports procurement activities; do you see that? 22 A I do. 23 Q Do you agree with that statement? 24 A Yes. 25 Q And there is a pros and cons. Do you see that?</p>

<p>769</p> <p>1 A I do.</p> <p>2 Q What is one of the pros that Grenada Research identifies</p> <p>3 here?</p> <p>4 A So the first one, enables buyers and employee</p> <p>5 requisitioners to find all suppliers of a given category.</p> <p>6 Q Is there a con?</p> <p>7 A Yes. Requires up-front effort to apply codes, can be done</p> <p>8 by third party.</p> <p>9 Q And have you seen -- is this the Lawson that says its</p> <p>10 customers will provides that service?</p> <p>11 A Yes.</p> <p>12 Q Underneath that table, there is a heading called product</p> <p>13 discovery?</p> <p>14 A Yes.</p> <p>15 Q What, if any, significance does this have to your opinions</p> <p>16 with respect to how the UNSPSC assists buyers and</p> <p>17 requisitioners to find suppliers in a given category?</p> <p>18 A The first two sentences are relevant. A common naming</p> <p>19 conventional allows computer systems to automatically list</p> <p>20 similar products under a single category. When a person is</p> <p>21 searching for the category, he or she finds precisely the</p> <p>22 things being discovered and nothing else.</p> <p>23 Q Can you turn to page ten of the document which ends with a</p> <p>24 Bates label 041. And there's a heading called unique item</p> <p>25 codes for schema modifications and multi-language uses.</p>	<p>771</p> <p>1 the family, the class, and the commodity for office equipment</p> <p>2 going down to pen refills. Is this the same kind of example</p> <p>3 you gave yesterday with how, in effect, this eight-digit coding</p> <p>4 can drill down to get you to a specific product that you want?</p> <p>5 A Yes, it is. The example we used yesterday went down to</p> <p>6 black pens. This was a different class, so it ends up with a</p> <p>7 different commodity, but it's the same schema.</p> <p>8 Q Why don't you go, then, to page 12 on this exhibit, and if</p> <p>9 we could, just the chart. So, again, this is describing the</p> <p>10 levels of the UNSPSC -- actually, this even has one additional</p> <p>11 level down there. Do you see this business function?</p> <p>12 A Yes.</p> <p>13 Q What does it say by the time you get down to the commodity</p> <p>14 level, that last level? What does it say with regard to what</p> <p>15 you can now do with this tool in order to identify product or</p> <p>16 service? How does it characterize it?</p> <p>17 A What it says, by the time you've gotten down to the</p> <p>18 commodity level, you have found a group of substitutable</p> <p>19 products or services, and we just saw that with the halogen</p> <p>20 lamps.</p> <p>21 Q Doctor, your opinion, if the parts are substitutable,</p> <p>22 would they be similar or generally equivalent?</p> <p>23 A Yes, they would.</p> <p>24 Q Thank you, Doctor. That is all I have with respect to</p> <p>25 that document.</p>
<p>770</p> <p>1 A Yes.</p> <p>2 Q And at the end, I don't want to have to go through this</p> <p>3 entire paragraph -- the jury is going to have this in the jury</p> <p>4 room -- but what, of significance, in that paragraph would you</p> <p>5 like to point out?</p> <p>6 A In the fourth paragraph, it's the last sentence which</p> <p>7 says, in effect, unique numbers allow cross-referencing to</p> <p>8 assure consistency.</p> <p>9 Q Is cross-referencing relevant in this case?</p> <p>10 A Yes. That's a term in the patent.</p> <p>11 Q Is it a term that the Court's described in its glossary of</p> <p>12 terms?</p> <p>13 A Yes, it is.</p> <p>14 Q Why don't you go to that if you could for a second. Cross</p> <p>15 reference table, do you see the Court defined that?</p> <p>16 A It's the third one down.</p> <p>17 Q It says, the Court's construction is a table that links</p> <p>18 vendor items determined to be equivalent between two or more</p> <p>19 different vendors. Do you see that?</p> <p>20 A I do.</p> <p>21 Q Does this UNSPSC hierarchical schema permit the</p> <p>22 cross-referencing capability the Judge has defined there?</p> <p>23 A Yes, it does.</p> <p>24 Q Turn to page 13 of the document for now, and just I want</p> <p>25 to focus on that hierarchy. Is this -- this has the segment,</p>	<p>772</p> <p>1 THE COURT: Is that 111 or 11?</p> <p>2 MR. ROBERTSON: 11, sir. I may have misspoken.</p> <p>3 THE COURT: No, I didn't write it down.</p> <p>4 Q Doctor, I'd like to talk to you a little bit now about</p> <p>5 what's known as indirect infringement. You are familiar with</p> <p>6 that concept?</p> <p>7 A Yes.</p> <p>8 Q You understand that ePlus is also accusing Lawson of</p> <p>9 inducing infringement of the patent claims in this case by</p> <p>10 encouraging, aiding, abetting, or assisting its customers to</p> <p>11 directly infringe the method claims at issue in this case?</p> <p>12 A Yes, I understand that.</p> <p>13 Q What evidence have you reviewed with respect to whether or</p> <p>14 not Lawson does, in fact, encourage, assist, urge, aid, or abet</p> <p>15 its customers to use the Lawson systems in a manner that are</p> <p>16 covered by ePlus's claims?</p> <p>17 A Well, we saw yesterday that there were training courses</p> <p>18 that were being offered. We looked at one which was the notes</p> <p>19 for a training session, but there are live training sessions,</p> <p>20 there are archived on-line training sessions that you can play</p> <p>21 back. There are live training sessions that are using an</p> <p>22 interactive tool so that you can watch a training session and</p> <p>23 participate in it.</p> <p>24 We know from testimony of both the Lawson witnesses and</p> <p>25 their customers that Lawson provides consulting services to</p>

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<p>781</p> <p>1 another one. We just saw that in the Punchout. You can also</p> <p>2 do that with the internal catalogs, and you can search by</p> <p>3 keywords like Dell, or you can search by categories like we did</p> <p>4 as we marched through the UNSPSC codes.</p> <p>5 Q So does Lawson also indirectly infringe that by</p> <p>6 encouraging its customers to do the same?</p> <p>7 A Yes.</p> <p>8 Q Do you have an opinion as to whether or not Lawson systems</p> <p>9 include a means for searching for matching items among the</p> <p>10 selected product catalogs?</p> <p>11 A Yes, they do, and we saw that when I used the search</p> <p>12 engine.</p> <p>13 Q And did they indirectly infringe that claim element by</p> <p>14 assisting their customers to do the same?</p> <p>15 A Yes.</p> <p>16 Q The search engine you talked about, you also gave some</p> <p>17 evidence with respect to the search index; is that right?</p> <p>18 A That's right.</p> <p>19 Q We'll come back to that later in the context of some of</p> <p>20 the other claims. The search engine, though, just to refresh</p> <p>21 the jury was for what purpose?</p> <p>22 A This is to find the matching items.</p> <p>23 Q Do you have an opinion as to whether or not Lawson accused</p> <p>24 systems include means for building a requisition using data</p> <p>25 relating to selected matching items and their associated</p>	<p>783</p> <p>1 Q Do you have an opinion, Doctor, as to whether or not the</p> <p>2 accused Lawson systems satisfied the claim element means for</p> <p>3 converting data relating to a selected matching item and an</p> <p>4 associated source to data relating to an item in a different</p> <p>5 source?</p> <p>6 A Yes, and we saw that when we did the category search using</p> <p>7 the UNSPSC codes. And we also know this is made possible by</p> <p>8 that IC 516 program that loads UNSPSC codes into the item</p> <p>9 master.</p> <p>10 Q And this capability, is that provided to their customers?</p> <p>11 A Yes.</p> <p>12 Q And that is in the core IC module you mentioned?</p> <p>13 A Yes.</p> <p>14 Q And were there any demonstrations you put on for the jury</p> <p>15 to show how you could use that UNSPSC classification code to</p> <p>16 find generally equivalent items?</p> <p>17 A Yes. We just did that with the halogen lamps.</p> <p>18 Q So what is your opinion now -- I'm sorry. Did we see any</p> <p>19 evidence with respect to whether or not Lawson encourages or</p> <p>20 urges its customers to use the Lawson system to perform that</p> <p>21 cross-referencing capability or conversion capability?</p> <p>22 A Yes. We saw that in the training documents.</p> <p>23 Q The Judge has defined converting data related to a</p> <p>24 selected matching item and an associated source to an item in a</p> <p>25 different source. Do you see that?</p>
<p>782</p> <p>1 sources?</p> <p>2 A They do. We saw that in my, three of my demos and in</p> <p>3 their documentation.</p> <p>4 Q The Court defined matching items as search results. Is</p> <p>5 that consistent with your opinion?</p> <p>6 A Yes, it is.</p> <p>7 Q Does Lawson encourage its customers to directly infringe</p> <p>8 that claim by using the systems?</p> <p>9 A They do, and we had that list of evidence like training</p> <p>10 courses and help sites and Lawson employees going to the</p> <p>11 customer site to help them build or maintain their system.</p> <p>12 Q Do you have an opinion as to whether or not the accused</p> <p>13 Lawson systems have a capability of processing the requisition</p> <p>14 to generate one or more purchase orders for the selected</p> <p>15 matching items?</p> <p>16 A Yes. We saw that in my demo and in the system</p> <p>17 documentation.</p> <p>18 Q The Judge has defined selected matching items as</p> <p>19 requisition items. Is that -- is your opinion consistent with</p> <p>20 that?</p> <p>21 A Yes, it is.</p> <p>22 Q Does Lawson indirectly infringe -- meet this claim element</p> <p>23 by encouraging its customers to do the same by providing them</p> <p>24 with these systems?</p> <p>25 A Yes.</p>	<p>784</p> <p>1 A Yes. That's the second one on the glossary.</p> <p>2 Q Can you read for me what the Judge's definition is?</p> <p>3 A Substituting data related to a selected matching item and</p> <p>4 an associated source to data relating to an item and a</p> <p>5 different source.</p> <p>6 Q And in your opinion, does the Lawson system satisfy the</p> <p>7 Judge's definition of that claim element?</p> <p>8 A It does, and we just saw that with the halogen lamp from</p> <p>9 Granger and substituting the halogen lamp from Gexpro.</p> <p>10 Q So, Doctor, what is your opinion with respect to whether</p> <p>11 Lawson infringes claim three both directly and indirectly?</p> <p>12 A I believe they do.</p> <p>13 Q Next claim at issue here, which is the claim 26, this is</p> <p>14 the method comprising those steps. Again, the direct</p> <p>15 infringement here, or the accused direct infringement here for</p> <p>16 performing this method step is the customers performing these</p> <p>17 steps by using the Lawson system. Do you understand that?</p> <p>18 A I do.</p> <p>19 Q And you also mentioned this instance where Lawson may host</p> <p>20 a system for customers to use at the Lawson site. Do you see</p> <p>21 that?</p> <p>22 A Yes.</p> <p>23 Q So I want to go through this relatively quickly in the</p> <p>24 sense that these claim elements match up to the system claims</p> <p>25 that we just went through with the exception that we have this</p>

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<p>785</p> <p>1 new element, the last element, determining whether a selected</p> <p>2 matching item is available in inventory. So just very quickly,</p> <p>3 Doctor, does Lawson --</p> <p>4 MR. McDONALD: Your Honor, I object to the</p> <p>5 characterization since these terms were not construed as means</p> <p>6 plus function because they are system claims, so they aren't</p> <p>7 similar.</p> <p>8 MR. ROBERTSON: I'll go through it in a little bit</p> <p>9 more deliberate fashion.</p> <p>10 Q Does the Lawson system permit a customer to perform the</p> <p>11 following steps: Maintain at least two product catalogs on the</p> <p>12 database containing data relating to items associated with the</p> <p>13 respective sources?</p> <p>14 A Yes.</p> <p>15 Q Select the product catalogs to search?</p> <p>16 A Yes.</p> <p>17 Q Search for matching items among the selected product</p> <p>18 catalogs?</p> <p>19 A Yes.</p> <p>20 Q For matching items, did you apply the Judge's</p> <p>21 construction?</p> <p>22 A I did.</p> <p>23 Q For product catalogs, did you apply the Judge's</p> <p>24 construction?</p> <p>25 A I did.</p>	<p>787</p> <p>1 A I was.</p> <p>2 Q How can you satisfy -- can you also satisfy this inventory</p> <p>3 determination by using the EDI module?</p> <p>4 A We mentioned yesterday there was this EDI 855 message, the</p> <p>5 purchase order acknowledgment, so after the purchase order 850</p> <p>6 message goes out, the PO 855, purchase order acknowledgment</p> <p>7 comes backs, and it tells whether or not the vendor can fulfill</p> <p>8 the order, and it can also contain information like whether the</p> <p>9 product that you are trying to order is backordered or out of</p> <p>10 stock.</p> <p>11 Q Do you have an opinion with respect to the activities of</p> <p>12 Lawson to encourage assist, aid, abet, and urge its customers</p> <p>13 to use the Lawson systems in the manners claimed in claim 26?</p> <p>14 A Yes.</p> <p>15 Q So would that constitute indirect infringement of all</p> <p>16 these elements?</p> <p>17 A It would.</p> <p>18 Q Dr. Weaver, let's take a look at claim 28, if we could.</p> <p>19 Now, again, this is a method claim, so we're talking about the</p> <p>20 customers and Lawson when it hosts an infringing system, so --</p> <p>21 and with respect to this claim, these elements are</p> <p>22 substantially identical with respect to claim 26 except the</p> <p>23 last step has to do with converting data relating to selected</p> <p>24 matching items and associated source to data relating to an</p> <p>25 item in a different source. Do you see that?</p>
<p>786</p> <p>1 Q Does the Lawson system permit or provide the ability to</p> <p>2 build a requisition using data related to selected matching</p> <p>3 items and their associated sources?</p> <p>4 A Yes.</p> <p>5 Q Did we see that?</p> <p>6 A Yes.</p> <p>7 Q Did you perform the steps of this method claim when you</p> <p>8 did the demonstration?</p> <p>9 A I did.</p> <p>10 Q Does the Lawson accused system provide the ability,</p> <p>11 capability of processing the requisition to generate one or</p> <p>12 more purchase orders for the selected matching items?</p> <p>13 A Yes, we saw that.</p> <p>14 Q Does the Lawson system in operation permit, or is it</p> <p>15 capable of determining whether a selected matching item is</p> <p>16 available in inventory?</p> <p>17 A Yes. We saw that with the case, with the laptop cases</p> <p>18 today, and yesterday we saw it with the desk. I wanted a first</p> <p>19 desk but it was back ordered, so I got a second desk that was</p> <p>20 available in inventory. And the same with the printer</p> <p>21 yesterday. I chose a first printer. It was not available. It</p> <p>22 was out of stock, so I got a second printer.</p> <p>23 Q So, in your demonstrations that you provided for the jury,</p> <p>24 you were able to show that the system was capable of doing all</p> <p>25 these steps?</p>	<p>788</p> <p>1 A Yes.</p> <p>2 Q Whereas claim 26 had to do with this inventory</p> <p>3 availability capability; correct?</p> <p>4 A Correct.</p> <p>5 Q So with respect to the first five elements, would your</p> <p>6 opinion be the same with respect to whether those elements are</p> <p>7 being practiced by the customers when they perform these steps</p> <p>8 or by Lawson when it hosts the system?</p> <p>9 A Yes.</p> <p>10 Q We can check those boxes off. Again, did we see you</p> <p>11 actually performing those steps when you did your</p> <p>12 demonstrations?</p> <p>13 A Yes. That was the UNSPSC codes.</p> <p>14 Q Well, that's the last element --</p> <p>15 A You are talking about these first five.</p> <p>16 Q Yes.</p> <p>17 A I demonstrated all of these.</p> <p>18 Q So this last element about converting data which we've</p> <p>19 already given the jury the Judge's definition of substituting</p> <p>20 data related to a selected matching item and the associated</p> <p>21 source to data relating to an item in a different source,</p> <p>22 applying that definition, does Lawson directly infringe this</p> <p>23 claim?</p> <p>24 A Yes.</p> <p>25 Q And do the customers perform the steps of this claim when</p>

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<p>789</p> <p>1 they use the system with that capability?</p> <p>2 A Yes.</p> <p>3 Q Go to claim 29. This is a dependent claim; correct,</p> <p>4 Doctor?</p> <p>5 A Yes, it is.</p> <p>6 Q So this dependent claim has to have all the steps that you</p> <p>7 just indicated were present in claim 28 plus the additional</p> <p>8 step of determining whether selective matching items available</p> <p>9 in inventory; do you see that?</p> <p>10 A I do.</p> <p>11 Q What is your opinion with respect to direct infringement</p> <p>12 and indirect infringement as to this dependent claim 29?</p> <p>13 A I believe that Lawson is a direct infringer and an</p> <p>14 indirect infringer. We just saw with claim 28 that we went all</p> <p>15 the way through the converting process, and in the demo that I</p> <p>16 just showed you, we did both the conversion with the UNSPSC</p> <p>17 codes, and then we did the determination of whether or not it</p> <p>18 was available in inventory when we did the laptop roller cases.</p> <p>19 Q And by providing this capability to its customers, is</p> <p>20 Lawson encouraging aiding, abetting, or assisting them in</p> <p>21 performing this step?</p> <p>22 A Yes.</p> <p>23 Q Let's go to claim one of the '172, if we can, please.</p> <p>24 That's also an electronic sourcing system.</p> <p>25 THE COURT: That's tab four in your books, ladies and</p>	<p>791</p> <p>1 Q Does the Lawson system, as -- is the Lawson system capable</p> <p>2 of providing a database containing data relating to items</p> <p>3 associated with at least two vendors maintained so that</p> <p>4 selected portions of the database may be searched separately?</p> <p>5 MR. McDONALD: I object to the form of the question,</p> <p>6 Your Honor. The element doesn't say capable of. It says a</p> <p>7 database.</p> <p>8 THE COURT: He's objected to the form of the</p> <p>9 question.</p> <p>10 MR. ROBERTSON: The law is, Your Honor, all they have</p> <p>11 to do is provide a system that's capable of doing that. So I</p> <p>12 think the objection is not well-taken.</p> <p>13 THE COURT: Anything else?</p> <p>14 MR. McDONALD: There's a distinction I'm making</p> <p>15 between the database versus function. Capable of performing a</p> <p>16 function is one thing. Having a database is another.</p> <p>17 THE COURT: I think they're two different questions.</p> <p>18 I think the first question is, does it have a database. If it</p> <p>19 doesn't, then you have to say something else. Your objection</p> <p>20 is sustained to the form of the question.</p> <p>21 Q Does the Lawson system have a database containing data</p> <p>22 relating to items associated with at least two vendors</p> <p>23 maintained so that selected portions of the database maybe</p> <p>24 searched separately?</p> <p>25 A Yes. We saw the database in the item master and the</p>
<p>790</p> <p>1 gentlemen.</p> <p>2 Q Now, this also starts out with a preamble, an electronic</p> <p>3 sourcing system comprising; do you see that?</p> <p>4 A Yes.</p> <p>5 Q Did you apply the same definition that the Court gave for</p> <p>6 that?</p> <p>7 A I did.</p> <p>8 Q Both for direct and indirect infringement?</p> <p>9 A Yes.</p> <p>10 Q This is a system claim, so this involves the system or the</p> <p>11 product we're talking about here; is that right?</p> <p>12 A That's right.</p> <p>13 Q By providing a system capable of performing all of the</p> <p>14 structures disclosed here, do you have an opinion, first, as to</p> <p>15 whether or not Lawson provides a database containing data</p> <p>16 relating to items associated with at least two vendors</p> <p>17 maintained so that selected portions of the database may be</p> <p>18 searched separately?</p> <p>19 MR. McDONALD: Object to the form of the question,</p> <p>20 Your Honor. He said something about capable of performing some</p> <p>21 structures or something. I think it's ambiguous as to what</p> <p>22 that means.</p> <p>23 THE COURT: I don't see structures in there.</p> <p>24 MR. ROBERTSON: I will rephrase the question, Your</p> <p>25 Honor.</p>	<p>792</p> <p>1 vendor item table, and selecting portions of the database to be</p> <p>2 searched separately was done by the search index.</p> <p>3 Q Have we seen examples where Lawson has implemented</p> <p>4 scenarios in which they have provided vendor data for their</p> <p>5 customers?</p> <p>6 A Yes.</p> <p>7 Q Have we seen examples where they do what you identified as</p> <p>8 data migration of the customer's catalog data to the new Lawson</p> <p>9 system?</p> <p>10 A We saw that in the statement of work.</p> <p>11 Q Is the Lawson system capable of containing data relating</p> <p>12 to items associated with at least two vendors maintained so</p> <p>13 that selected portions of the database may be searched</p> <p>14 separately?</p> <p>15 A Yes.</p> <p>16 Q Did Lawson assist, aid, abet, or encourage its customers</p> <p>17 to maintain a database that would satisfy the first claim</p> <p>18 element?</p> <p>19 A Yes.</p> <p>20 Q These next five elements are means-plus-function claim</p> <p>21 elements. You are familiar with that?</p> <p>22 A I am.</p> <p>23 Q The Court's construed these claim elements. You've</p> <p>24 reviewed those constructions; is that right?</p> <p>25 A Yes.</p>

<p>797</p> <p>1 let's go through direct infringement first and identify which</p> <p>2 system infringes which claim.</p> <p>3 A Okay.</p> <p>4 Q And in each of these system configurations, do you have an</p> <p>5 opinion as to whether or not all five satisfy the preamble that</p> <p>6 they are electronic sourcing systems as defined by the Judge?</p> <p>7 A Yes, all five.</p> <p>8 Q In each of these configurations, does Lawson provide an</p> <p>9 accused system, all five system that's capable of having at</p> <p>10 least two product catalogs containing data related to items and</p> <p>11 items associated with respect to sources?</p> <p>12 A Yes.</p> <p>13 Q In each of these scenarios, does all five systems, do they</p> <p>14 provide the means for selecting a product catalog to search?</p> <p>15 A Yes.</p> <p>16 Q In each of these systems, do they provide means for</p> <p>17 searching for matching items among the selected product</p> <p>18 catalogs?</p> <p>19 A Yes.</p> <p>20 Q In each of these systems, have we seen evidence that shows</p> <p>21 that they have the means for building a requisition using data</p> <p>22 relating to selected matching item and their associated</p> <p>23 sources?</p> <p>24 A Yes.</p> <p>25 Q In each of these five system that we've identified, does</p>	<p>799</p> <p>1 that both of these are method claims?</p> <p>2 A That's correct.</p> <p>3 Q And both of these have -- the first five elements are</p> <p>4 identical?</p> <p>5 A They are.</p> <p>6 Q Now, earlier you said the direct infringement, I</p> <p>7 understood your opinion to be, would be by the customers</p> <p>8 performing the steps of this method claim as well as Lawson</p> <p>9 when it hosts a system that can perform the steps of these</p> <p>10 claims; is that right?</p> <p>11 A That's correct.</p> <p>12 Q So do you have an opinion as to whether or not customers</p> <p>13 can perform the step of maintaining at least two product</p> <p>14 catalogs on a database containing data relating to items</p> <p>15 associated with the respective sources?</p> <p>16 A Yes, all of the systems do that.</p> <p>17 Q Okay, all five?</p> <p>18 A All five.</p> <p>19 Q Now, the same for claim 28, do you have an opinion as to</p> <p>20 whether or not customers, using all five of the systems as they</p> <p>21 are configured and defined, can select or -- can perform the</p> <p>22 steps of selecting product catalogs to search?</p> <p>23 A Yes, they can.</p> <p>24 Q Now, that would be the same for both claim 26 and 28?</p> <p>25 A Yes, it's the same.</p>
<p>798</p> <p>1 it have the means for processing the requisition to generate</p> <p>2 one or more purchase orders for the selected matching items?</p> <p>3 A Yes.</p> <p>4 Q Which of the five systems have we seen have the ability</p> <p>5 for converting data relating to a selected matching item and</p> <p>6 associated source to data relating to an item and a different</p> <p>7 source?</p> <p>8 A The ones that contain the requisition self-service module.</p> <p>9 Q So if it had the requisition self-service module, that</p> <p>10 would be able to satisfy this last claim element?</p> <p>11 A Yes.</p> <p>12 Q So that would be system, two, three, four, and five as we</p> <p>13 defined them; is that right?</p> <p>14 A That's what my diagram says, yes.</p> <p>15 Q For each of these elements, does Lawson encourage, aid,</p> <p>16 abet, or assist their customers to satisfy them?</p> <p>17 A Yes.</p> <p>18 Q These two product catalogs, have we seen instances where</p> <p>19 Lawson will make catalogs available, multiple catalogs</p> <p>20 available to their customers either through external, Punchout</p> <p>21 catalogs, or internal catalog databases?</p> <p>22 A Yes, we have.</p> <p>23 Q Let's go to claim 26 if we can. Let's do that. If we can</p> <p>24 put claim 26 next to claim 28, put those side by side. They're</p> <p>25 a little difficult to read, but can you confirm for me, Doctor,</p>	<p>800</p> <p>1 Q All right. The next step in these method claims is</p> <p>2 searching for matching items among the selected product</p> <p>3 catalogs. Do you see that?</p> <p>4 A I do.</p> <p>5 Q That's for both claim 26 and claim 28?</p> <p>6 A Correct.</p> <p>7 Q We see the ability to search for matching items among the</p> <p>8 selected product catalogs in evidence you offered?</p> <p>9 A Yes. We saw it in the demonstrations.</p> <p>10 Q Did we see it in documentation?</p> <p>11 A Certainly.</p> <p>12 Q That would be for both claims?</p> <p>13 A For both claims.</p> <p>14 Q Does all five of the accused Lawson systems have the</p> <p>15 ability to, capability of building a requisition using data</p> <p>16 relating to selected matching items and their associated</p> <p>17 sources?</p> <p>18 A Yes.</p> <p>19 Q Can the customers perform that step with all five</p> <p>20 configurations that we've defined?</p> <p>21 A Yes.</p> <p>22 Q The next step is processing requisition to generate one or</p> <p>23 more purchase orders for the selected matching items. Did we</p> <p>24 see that that step could be performed in the demonstrations?</p> <p>25 A We saw it in the demonstrations.</p>

<p>801</p> <p>1 Q Can that be performed for all five of their configurations 2 as we've defined them? 3 A Yes, it can. 4 Q Is there indirect infringement of that as well? 5 A Yes. 6 Q That would be for both claim 26 and claim 28? 7 A Correct. 8 Q Is that because the step there -- 9 A Because it's identical. 10 Q Now, the next and last step in claim 26 is determining 11 whether a selected matching item is available in inventory. 12 Which of the five configurations of these accused Lawson 13 systems has the capability of performing that step? 14 A It's, it would be the system that we called system three 15 which was Punchout, requisition self-service, the procurement 16 modules, and the platform; system four, which was the EDI 17 module on top of the procurement system on top of the platform; 18 and system five, which had Punchout, requisition self-service, 19 electronic data interchange, the procurement modules, and the 20 platform. 21 Q Do you have an opinion as to whether or not Lawson 22 indirectly infringes that claim as well? 23 A Yes, I believe they do. 24 Q How do they do that? 25 A By providing those training courses, that assistance,</p>	<p>803</p> <p>1 of the elements of the method claim of claim 28 in order to 2 infringe claim 29; is that right? 3 A Right. 4 Q So you have to be able to perform that converting-data 5 step to find items associated with one source and items 6 associated with another source; correct? 7 A Right. 8 Q Then to infringe this claim, you'd also be able to have to 9 take that system and have a step of determining whether a 10 selected matching item is available in inventory; is that 11 correct? 12 A Correct. 13 Q Which of the systems, as we've identified them, would 14 infringe or directly infringe claim 29? 15 A Three and five. 16 Q Why is that? 17 A Because they contain the Punchout module that lets us 18 check inventory externally, the requisition self-service that 19 allows us to do the conversion using those UNSPSC codes, and 20 system five also had the EDI module which was the purchase 21 order and purchase order acknowledgment exchange. 22 Q And does Lawson indirectly infringe claim 29 by assisting, 23 aiding, abetting, encouraging its customers to perform this 24 method step? 25 A Yes.</p>
<p>802</p> <p>1 those manuals, online training, professional services. 2 Q The last element of claim 28, is this converting-data 3 element that had to do with the ability to find a selected 4 matching item and an associated source and relating it to data 5 relating to an item in a different source; do you see that? 6 A I do. 7 Q What systems, in your opinion, satisfy that claim element? 8 A The ones containing the requisition self-service module 9 which would be two, three, and five. 10 Q Does four have a requisition self-service module? 11 A No. 12 THE COURT: Four is core plus EDI. 13 MR. ROBERTSON: I apologize. 14 Q All right. Do you have an opinion as to whether or not 15 they indirectly infringe claim 28 in the same manner they 16 infringe claim 26? 17 A Yes. 18 THE COURT: And is the answer that they do or they 19 don't? 20 THE WITNESS: The answer is that they do. 21 MR. ROBERTSON: Thank you, Your Honor. 22 Q Claim 29, this was that dependent claim that depends from 23 claim 28; correct? 24 A Correct. 25 Q So in order to infringe claim 29, you have to satisfy all</p>	<p>804</p> <p>1 Q And do they also indirectly -- actually, strike that. I 2 think we're done with claim 29. Why don't we go to claim one 3 of the '172 patent. Again, this is an electronic sourcing 4 system. Do you see that? 5 A Yes. 6 Q Now, it also uses the term comprising as all these claims 7 have used. Would you just refresh the jury as to what your 8 understanding is of the term comprising? 9 A Comprising means including but not limited to. 10 Q So we're going to have to have all of these elements, but 11 we could have additional elements, and that would make it 12 non-infringing; is that right? All the elements here are 13 satisfied? 14 A Correct. 15 Q So, for example, in your demonstrations, there was some 16 steps in which you had to seek certain approvals from managers 17 or technical people in order to be able to complete the 18 requisition and purchase order process? 19 A Right, but that's irrelevant to this claim. 20 THE COURT: Your opinion, they infringe all five 21 systems or infringement -- if there's infringement, the mere 22 fact that there is the process of going to the managers, et 23 cetera, doesn't change the fact that they infringe if you 24 conclude there's infringement, and that is the way -- 25 THE WITNESS: Yes, it is.</p>

<p style="text-align: right;">817</p> <p style="text-align: center;">WEAVER - DIRECT 817</p> <p>1 containing data relating to items associated with at</p> <p>2 least two vendors maintained so that selected portions</p> <p>3 of the database may be searched separately?</p> <p>4 A Yes, they do.</p> <p>5 Q And in your opinion by the acts that we have</p> <p>6 described does Lawson satisfy that element for</p> <p>7 indirect infringement?</p> <p>8 A Yes.</p> <p>9 Q Do configurations 2, 3 and 5 have means for</p> <p>10 entering product information that at least partially</p> <p>11 describes at least one desired item?</p> <p>12 A Yes, 2, 3 and 5, they do.</p> <p>13 Q Do 2, 3 and 5 satisfy the element of means for</p> <p>14 searching for matching items that matched the entered</p> <p>15 product information in the selected portions of the</p> <p>16 database?</p> <p>17 A They do.</p> <p>18 Q How did we see that?</p> <p>19 A Because of the user interface that we saw in the</p> <p>20 requisition self service.</p> <p>21 Q And we saw that in your demonstrations?</p> <p>22 A Sure, we did.</p> <p>23 Q Do configurations 2, 3 and 5 have means for</p> <p>24 generating an order list that includes at least one</p> <p>25 matching item selected by said means for searching?</p>	<p style="text-align: right;">819</p> <p style="text-align: center;">WEAVER - DIRECT 819</p> <p>1 these remaining elements are indirectly infringed by</p> <p>2 Lawson by providing those services?</p> <p>3 A My opinion is that they do.</p> <p>4 Q Why don't we go to the claims of the '516 patent.</p> <p>5 And that's behind tab 3 in the jurors' notebook. The</p> <p>6 first claim we're going to talk about there is Claim</p> <p>7 One. And, again, the preamble says it's an electronic</p> <p>8 sourcing system. Do you see that?</p> <p>9 A Yes.</p> <p>10 Q And the Court has defined that. It's the same for</p> <p>11 Claim One, for example, of the '172 patent. Is it</p> <p>12 your opinion that all five configurations that are</p> <p>13 accused here are electronic sourcing systems as the</p> <p>14 Court has defined them?</p> <p>15 A Yes.</p> <p>16 Q This electronic sourcing system also comprises a</p> <p>17 collection of catalogs of items stored in electronic</p> <p>18 format. Do all five configurations, as we have</p> <p>19 defined them, satisfy that claim element?</p> <p>20 A Right, all five contain multiple internal</p> <p>21 catalogs, and when you add Punchout, you can add</p> <p>22 external catalogs as well.</p> <p>23 Q Do all five configurations of these accused Lawson</p> <p>24 systems as we've defined them satisfy the claim</p> <p>25 element of having a first set of predetermined</p>
<p style="text-align: right;">818</p> <p style="text-align: center;">WEAVER - DIRECT 818</p> <p>1 A They do.</p> <p>2 Q Is it that RSS module that provides that order</p> <p>3 list or shopping cart as you referred to it?</p> <p>4 A Yes, the RSS is where the shopping cart</p> <p>5 functionality resides.</p> <p>6 Q Do configurations 2, 3 and 5 of the accused Lawson</p> <p>7 systems have a means for building a requisition that</p> <p>8 uses data obtained from said database related to</p> <p>9 selected matching items on said order list?</p> <p>10 A They do.</p> <p>11 Q Do configurations 2, 3 and 5 have a means for</p> <p>12 processing said requisition to generate purchase</p> <p>13 orders for said selected matching items?</p> <p>14 A They do. We saw that in the demo.</p> <p>15 Q The searching that's the subject of the means for</p> <p>16 searching which permits you to search a database,</p> <p>17 selected portions of a database, what evidence did we</p> <p>18 see that that was present?</p> <p>19 A That was the search index that selected only --</p> <p>20 that searched only selected portions of the database.</p> <p>21 Q Now, if Lawson provides such an electronic</p> <p>22 sourcing system to its customers and assists them in</p> <p>23 implementation, maintenance, servicing and all the</p> <p>24 training materials, guides, manuals, online services,</p> <p>25 etc., do you have an opinion as to whether or not all</p>	<p style="text-align: right;">820</p> <p style="text-align: center;">WEAVER - DIRECT 820</p> <p>1 criteria associated with said collection of catalogs?</p> <p>2 A Yes, they do.</p> <p>3 Q What evidence do we see for that?</p> <p>4 A We saw in my demonstration that you could enter an</p> <p>5 item number, or vendor item, manufacturer number. You</p> <p>6 have a text box in the user interface that allowed</p> <p>7 that.</p> <p>8 Q Do all five configurations of the accused Lawson</p> <p>9 systems as we've defined them have a second set of</p> <p>10 predetermined criteria associated with items from each</p> <p>11 of said catalogs?</p> <p>12 A Yes, they do.</p> <p>13 Q How do they do that?</p> <p>14 A Again, that's the text box.</p> <p>15 Q Do all five configurations have a catalog</p> <p>16 selection protocol, said catalog selection protocol</p> <p>17 relying on said first set of predetermined criteria to</p> <p>18 select less than said entire collection of catalogs,</p> <p>19 including a matching vendor identification code with a</p> <p>20 subset of said collection of catalogs wherein said</p> <p>21 subset of catalogs includes both a vendor catalog from</p> <p>22 a predetermined vendor and a second catalog from a</p> <p>23 predetermined third party that's one of a manufacturer</p> <p>24 and a competing vendor, said predetermined third party</p> <p>25 selling items corresponding to items in said vendor</p>

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<p style="text-align: right;">821</p> <p style="text-align: center;">WEAVER - DIRECT 821</p> <p>1 catalog?</p> <p>2 A That's a mouthful, isn't it? The answer is yes.</p> <p>3 And we saw that yesterday when I did the demonstration</p> <p>4 where I first searched for Dell and got back items</p> <p>5 that included Dell as one of these keywords. So that</p> <p>6 was my first predetermined criteria.</p> <p>7 And then I added a second predetermined criteria,</p> <p>8 the Dimension 8100, and that narrowed the search down</p> <p>9 to just two items, but they were from different</p> <p>10 vendors, Dell and Diablo. So one of them was a</p> <p>11 competing vendor. Dell is a manufacturer. Dell is a</p> <p>12 competing vendor.</p> <p>13 So, yes, we've seen evidence that these systems</p> <p>14 that we're talking about directly infringe the fourth</p> <p>15 element of Claim One.</p> <p>16 Q The last element of Claim One of the '516 patent</p> <p>17 is a search program. Said search program relying on</p> <p>18 said second set of criteria to select specific items</p> <p>19 from said catalogs determined from said catalog</p> <p>20 selection protocol. Did I read that correctly?</p> <p>21 A I think so. Again, we saw that yesterday in the</p> <p>22 demonstration where Dimension 8100 was the second set</p> <p>23 of predetermined criteria.</p> <p>24 Q Did you use that second set of predetermined</p> <p>25 criteria to conduct the search?</p>	<p style="text-align: right;">823</p> <p style="text-align: center;">WEAVER - DIRECT 823</p> <p>1 Q So we have to satisfy all the elements of Claim</p> <p>2 One, which you just indicated for all five</p> <p>3 configurations is infringing.</p> <p>4 Claim Two talks about having catalogs stored in</p> <p>5 separate databases. Do you see that?</p> <p>6 A I do.</p> <p>7 Q How would the configurations as we've defined them</p> <p>8 satisfy this separate database requirement?</p> <p>9 A These would be external databases that are</p> <p>10 accessible through the Punchout module.</p> <p>11 Q Could they be a Punchout external plus Lawson</p> <p>12 internal catalogs?</p> <p>13 A Of course.</p> <p>14 Q So if it requires Punchout, only configurations 3</p> <p>15 and 5, as we've defined them, have Punchout; is that</p> <p>16 right?</p> <p>17 A That's my diagram, yes.</p> <p>18 Q So your opinions with respect to Claim Two, I'd</p> <p>19 like you to confine them to just configurations 3 and</p> <p>20 5 that have the Punchout application. Okay?</p> <p>21 A Right.</p> <p>22 Q Does Lawson configurations 3 and 5 satisfy the</p> <p>23 claim cited in Claim Two of an electronic sourcing</p> <p>24 system as recited in Claim One wherein catalogs</p> <p>25 comprised of said collection of catalogs are stored in</p>
<p style="text-align: right;">822</p> <p style="text-align: center;">WEAVER - DIRECT 822</p> <p>1 A Yes, I did.</p> <p>2 Q So do all five configurations of the accused</p> <p>3 systems as we've defined them satisfy all of the</p> <p>4 elements of Claim One of the '516 patent?</p> <p>5 A Yes, they do.</p> <p>6 Q If Lawson offers all five of those configurations,</p> <p>7 manufacturers, sells or imports, do they directly</p> <p>8 infringe this claim?</p> <p>9 A Yes, they would.</p> <p>10 Q And in the same manner, if they provide such a</p> <p>11 system to their customers and then induce them to use</p> <p>12 that system by the evidence that you've offered of</p> <p>13 assisting, aiding, abetting, encouraging, etc.,</p> <p>14 through all the various services and implementation</p> <p>15 and educational services they provide, what is your</p> <p>16 opinion with respect to whether or not Lawson</p> <p>17 indirectly infringes Claim One?</p> <p>18 A I believe they do.</p> <p>19 Q So they would satisfy all of the elements if they</p> <p>20 provided a system that had this capability and then</p> <p>21 performed those acts that would constitute inducement?</p> <p>22 A Yes.</p> <p>23 Q Let's look at Claim Two of the '516 patent, which</p> <p>24 is a dependent claim. Do you understand that?</p> <p>25 A Sure. It depends from Claim One.</p>	<p style="text-align: right;">824</p> <p style="text-align: center;">WEAVER - DIRECT 824</p> <p>1 separate databases?</p> <p>2 A Yes, we saw that in the Punchout to Dell and</p> <p>3 Staples.</p> <p>4 Q Do they indirectly infringe in the same manner</p> <p>5 that you have been describing?</p> <p>6 A Yes.</p> <p>7 Q Let's go to Claim Six if we can. Again, Claim Six</p> <p>8 is a dependent claim that depends on Claim One. So</p> <p>9 all the elements of Claim One need to be satisfied,</p> <p>10 and you have already rendered an opinion that that is</p> <p>11 present.</p> <p>12 Claim Six recites an electronic sourcing system as</p> <p>13 recited in Claim One where it said second set of a</p> <p>14 predetermined criteria includes at least one of a</p> <p>15 catalog number and an item textual information. Do</p> <p>16 you see that?</p> <p>17 A I do.</p> <p>18 Q Do configurations 3 and 5 including -- excuse me.</p> <p>19 Let me step back. What configurations satisfy Claim</p> <p>20 Six that has at least one of the catalogs -- excuse</p> <p>21 me -- wherein said set of predetermined criteria</p> <p>22 includes at least one of the catalog number and item</p> <p>23 textual information?</p> <p>24 A All five.</p> <p>25 Q Does Lawson indirectly infringe in your opinion in</p>

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<p style="text-align: right;">825</p> <p style="text-align: center;">WEAVER - DIRECT 825</p> <p>1 the same manner you have been describing?</p> <p>2 A Yes.</p> <p>3 Q Let's look at Claim Nine if we could. Claim Nine</p> <p>4 is an independent claim, is that right, Doctor?</p> <p>5 A It is.</p> <p>6 Q Again, it has the an electronic sourcing system</p> <p>7 comprising. Is that in your view the same electronic</p> <p>8 sourcing system that the Court has defined?</p> <p>9 A It is.</p> <p>10 Q Which of the configurations has a collection of</p> <p>11 catalog items stored in electronic format?</p> <p>12 A All five have this first element.</p> <p>13 Q Which of the configurations have a first</p> <p>14 identification code associated with a first term in a</p> <p>15 first catalog?</p> <p>16 A First item in a first catalog. That's all five.</p> <p>17 Q Okay. This last element has a second</p> <p>18 identification code associated with a second item in a</p> <p>19 second catalog. Said first item and said second item</p> <p>20 being generally equivalent and wherein a selection of</p> <p>21 one identification code from one of said first and</p> <p>22 second catalogs provides the other identification code</p> <p>23 from the other of said catalogs.</p> <p>24 MR. McDONALD: Your Honor, I object. I think</p> <p>25 for this claim we're just talking about all the</p>	<p style="text-align: right;">827</p> <p style="text-align: center;">WEAVER - DIRECT 827</p> <p>1 MR. ROBERTSON: Let me do it this way, if I</p> <p>2 could.</p> <p>3 BY MR. ROBERTSON:</p> <p>4 Q Doctor, this last element of Claim Nine, let's</p> <p>5 focus on that. A second identification code</p> <p>6 associated with a second item in a second catalog said</p> <p>7 first item and said second item being generally</p> <p>8 equivalent and wherein a selection of one</p> <p>9 identification code from one of said first and second</p> <p>10 catalogs provides the other identification code from</p> <p>11 the other of said catalogs, what configurations have</p> <p>12 we seen that can satisfy this claim element of Claim</p> <p>13 Nine?</p> <p>14 A That one needs the catagory searched, which I</p> <p>15 demonstrated with the UNSPSC codes, and that's</p> <p>16 implemented by the requisition self service module.</p> <p>17 And as we have defined them, that's configurations 2,</p> <p>18 3 and 5.</p> <p>19 Q Just configurations 2, 3 and 5 have the ability to</p> <p>20 do that UNSPSC capability in order to satisfy this</p> <p>21 claim element?</p> <p>22 A That's correct.</p> <p>23 Q Let's just focus on configurations 2, 3 and 5 for</p> <p>24 purposes of this claim.</p> <p>25 THE COURT: The objection to the question,</p>
<p style="text-align: right;">826</p> <p style="text-align: center;">WEAVER - DIRECT 826</p> <p>1 systems except one. So I did rather the questions</p> <p>2 were phrased in that context.</p> <p>3 MR. ROBERTSON: I think when he answers the</p> <p>4 question, we can find out which configurations satisfy</p> <p>5 this element and therefore that will identify the</p> <p>6 configurations that are infringed.</p> <p>7 MR. McDONALD: The prior ones he's already</p> <p>8 used all the systems. I was a little slow in reacting</p> <p>9 there.</p> <p>10 THE COURT: Which ones do you say are charged</p> <p>11 with infringement in the complaint of Claim Nine.</p> <p>12 MR. McDONALD: All except No. 1. Systems 2</p> <p>13 through 5 are accused of infringing Claim Nine, as I</p> <p>14 understand it.</p> <p>15 THE COURT: Is that right or is it wrong?</p> <p>16 MR. ROBERTSON: I don't have it committed</p> <p>17 right to my memory right this second.</p> <p>18 Your Honor, let me rephrase it.</p> <p>19 THE COURT: But you have to go back and</p> <p>20 rephrase all of them if he's right.</p> <p>21 You-all know which ones allegedly are</p> <p>22 infringed. He says that all five infringe it, but</p> <p>23 whether he accused them of that in the complaint, I</p> <p>24 don't know. I don't have it in front of me.</p> <p>25 Do you have it over there, somebody?</p>	<p style="text-align: right;">828</p> <p style="text-align: center;">WEAVER - DIRECT 828</p> <p>1 though, I think, has been cured. When he said all</p> <p>2 five satisfy element one and satisfy element two, then</p> <p>3 per force that includes 2, 3 and 5. So he's answered</p> <p>4 the questions, but the bottom line is that only the</p> <p>5 configurations 2, 3 and 5 are charged to infringe</p> <p>6 directly or indirectly Claim Nine; is that right?</p> <p>7 THE WITNESS: That's right, sir.</p> <p>8 THE COURT: Was that your opinion, sir?</p> <p>9 THE WITNESS: Yes, sir, it is.</p> <p>10 THE COURT: All right. Now, what about</p> <p>11 indirect?</p> <p>12 BY MR. ROBERTSON:</p> <p>13 Q By Lawson making, using, selling, offering for</p> <p>14 sale or importing electronic sourcing system that's</p> <p>15 capable of performing all of these elements and by</p> <p>16 encouraging, aiding, assisting and abetting their</p> <p>17 customers to use that same system through all of the</p> <p>18 various evidence you have offered as to providing</p> <p>19 manuals and guides and online services and training</p> <p>20 and implementation and servicing, do you have an</p> <p>21 opinion as to whether all of the elements of Claim</p> <p>22 Nine are satisfied and Lawson indirectly infringes</p> <p>23 that claim?</p> <p>24 THE COURT: As to which systems?</p> <p>25 MR. ROBERTSON: Two, 3 and 5.</p>

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<p style="text-align: right;">829</p> <p style="text-align: center;">WEAVER - DIRECT 829</p> <p>1 A Yes, I do.</p> <p>2 Q What is the opinion?</p> <p>3 A I believe that they indirectly infringe for</p> <p>4 configurations 2, 3 and 5.</p> <p>5 Q Okay. Let's focus on Claim 21 if we can for a</p> <p>6 minute, of the '516. Let me focus on the last element</p> <p>7 first, if I could.</p> <p>8 The last element says, Wherein said determination</p> <p>9 system includes a cross-reference table matching an</p> <p>10 identification code from a first located item with a</p> <p>11 second identification code from a second located item.</p> <p>12 Do you see that?</p> <p>13 A I do.</p> <p>14 Q So this element requires a cross-reference table.</p> <p>15 Do you see that?</p> <p>16 A I do.</p> <p>17 Q What software application or module of Lawson is</p> <p>18 required in order to do this cross-reference table</p> <p>19 matching?</p> <p>20 A That's requisition self service.</p> <p>21 Q So, therefore, that would include configurations</p> <p>22 2, 3 and 5; is that right?</p> <p>23 A That's right.</p> <p>24 Q So focusing only on configurations 2, 3 and 5 for</p> <p>25 the purposes of Claim 21, is it your opinion that</p>	<p style="text-align: right;">831</p> <p style="text-align: center;">WEAVER - DIRECT 831</p> <p>1 So in the item description, there were things like</p> <p>2 that cost, and the unit of measure, and the vendor</p> <p>3 name, and I could have used those items like vendor</p> <p>4 name as the additional search criteria.</p> <p>5 Q Do configurations 2, 3 and five have a multiple</p> <p>6 purchase order generation module, said purchase order</p> <p>7 generation module creating multiple purchase orders</p> <p>8 from a single requisition created with said user</p> <p>9 generated criteria and said search module criteria?</p> <p>10 A Yes, they do, and we saw that in three of my</p> <p>11 demos.</p> <p>12 Q Do configurations 2, 3 and 5 of the accused Lawson</p> <p>13 systems satisfy the element wherein each of at least</p> <p>14 two catalogs include a generally equivalent item from</p> <p>15 a different source of said requisition module working</p> <p>16 in combination with said catalog searching module to</p> <p>17 determine multiple sources for said item?</p> <p>18 A They do, and we saw that in my first demo where I</p> <p>19 looked for -- I used the UNSPSC codes to look for</p> <p>20 notebook computers and found two different computers</p> <p>21 from two different vendors.</p> <p>22 Q Do configurations 2, 3 and 5 satisfy the element</p> <p>23 wherein said multiple sources is limited by said</p> <p>24 catalog searching module providing a match according</p> <p>25 to said user generated criteria, said search module</p>
<p style="text-align: right;">830</p> <p style="text-align: center;">WEAVER - DIRECT 830</p> <p>1 those configurations comprise an electronic sourcing</p> <p>2 system?</p> <p>3 A Yes, it is.</p> <p>4 Q Do those configurations have a requisition module</p> <p>5 including data fields, user generated criteria entered</p> <p>6 into at least one of said data fields to generate at</p> <p>7 least partial criteria corresponding to a desired</p> <p>8 item?</p> <p>9 A They do. The requisition module has data fields</p> <p>10 like the name of the requester. And the user</p> <p>11 generated criteria could be things like the vendor</p> <p>12 number, vendor name, item number, manufacturer number.</p> <p>13 Q Do the configurations 2, 3 and 5 have a catalog</p> <p>14 collection searching module, said searching module</p> <p>15 including a collection of catalogs of items stored in</p> <p>16 an electronic format, a catalog collection criteria</p> <p>17 used to select less than the entire collection, said</p> <p>18 searching module being used to generate additional</p> <p>19 search module criteria for said data fields of said</p> <p>20 requisition module?</p> <p>21 A They do. And we saw that when I did a search for</p> <p>22 Dell, and that returned items, and I drilled down on</p> <p>23 the items. And the item page produced the -- what's</p> <p>24 the proper name for it? Yeah, to generate additional</p> <p>25 search module criteria.</p>	<p style="text-align: right;">832</p> <p style="text-align: center;">WEAVER - DIRECT 832</p> <p>1 criteria in a determination system that located items</p> <p>2 are generally equivalent?</p> <p>3 A They do. And, again, we saw that in my first demo</p> <p>4 using the UNSPSC codes to drill down to notebook</p> <p>5 computers, and we found the IBM ThinkPad and the Dell</p> <p>6 notebook.</p> <p>7 Q Do configurations 2, 3 and 5 satisfy the claim</p> <p>8 element wherein said determination system includes a</p> <p>9 cross-reference table matching identification codes</p> <p>10 from a first located item with a second identification</p> <p>11 code from a second located item?</p> <p>12 THE COURT: He's already answered that. He</p> <p>13 answered that. That's what you started with. You</p> <p>14 started with six, and you did 1, 2, 3, 4 and 5</p> <p>15 elements.</p> <p>16 Is your answer yes or no?</p> <p>17 THE WITNESS: The answer is yes.</p> <p>18 Q Do you have an opinion as to whether or not Lawson</p> <p>19 indirectly infringes Claim 21 by inducing infringement</p> <p>20 by all of the activities that we've previously</p> <p>21 described by offering a system that's capable of</p> <p>22 performing these claim elements?</p> <p>23 A My opinion is that they do.</p> <p>24 Q Would that be for all the elements?</p> <p>25 A It would.</p>

<p style="text-align: right;">833</p> <p style="text-align: center;">WEAVER - DIRECT 833</p> <p>1 Q Can we go to Claim 22? Claim 22, again, is one of</p> <p>2 these dependent claims which depends on Claim 21,</p> <p>3 which adds the additional limitation wherein said</p> <p>4 determination system includes an identical</p> <p>5 identification code for each of said located items.</p> <p>6 Do you have an opinion as to whether or not the</p> <p>7 configurations of the accused Lawson systems 2, 3 and</p> <p>8 5 satisfy that claim element?</p> <p>9 A My opinion is that they do. We saw that twice.</p> <p>10 Once in the demonstration where we drilled down to</p> <p>11 notebook computers and this morning where we drilled</p> <p>12 down to halogen lamps. The UNSPSC codes were</p> <p>13 identical for the two notebook computers and identical</p> <p>14 for the two halogen lamps.</p> <p>15 THE COURT: Which of the configurations are</p> <p>16 we talking about; 2, 3 and 5?</p> <p>17 THE WITNESS: Two, 3 and 5.</p> <p>18 BY MR. ROBERTSON:</p> <p>19 Q Why don't we go to Claim 29 of the '516.</p> <p>20 Actually, I'm reminded I may have overlooked indirect</p> <p>21 infringement on this one. Does Lawson indirectly</p> <p>22 infringe Claim 22 in the same manner that you have</p> <p>23 been describing, for example, as they indirectly</p> <p>24 infringe Claim 21?</p> <p>25 A Yes.</p>	<p style="text-align: right;">835</p> <p style="text-align: center;">WEAVER - DIRECT 835</p> <p>1 said subset of catalogs includes both a vendor catalog</p> <p>2 from a predetermined vendor and a second catalog from</p> <p>3 a predetermined third party?</p> <p>4 A Yes, they do. We saw that in my demo for the</p> <p>5 notebook computers.</p> <p>6 Q The Court has defined "subset" in its glossary.</p> <p>7 What has the Court defined "subset" to be?</p> <p>8 A Less than all of a set.</p> <p>9 Q Did you apply that construction in rendering your</p> <p>10 opinions?</p> <p>11 A I did.</p> <p>12 Q Next element of Claim 29 of the '516 recites a</p> <p>13 search program, said search program relying on said</p> <p>14 second set of criteria to select specific items from</p> <p>15 said catalogs determined from said catalog selection</p> <p>16 protocol. Do you see that?</p> <p>17 A I do.</p> <p>18 Q Do you have an opinion as to whether or not</p> <p>19 configurations 2, 3 and 5 satisfy that claim element?</p> <p>20 A They do. We saw that in my demonstration</p> <p>21 searching for Dell as the first predetermined criteria</p> <p>22 and the Dimension 8100 as the second.</p> <p>23 Q The last element of Claim 29 recites the</p> <p>24 cross-reference table linking a vendor item catalog</p> <p>25 number from said vendor catalog with an item catalog</p>
<p style="text-align: right;">834</p> <p style="text-align: center;">WEAVER - DIRECT 834</p> <p>1 Q Okay. Thank you.</p> <p>2 Claim 29 recites an electronic sourcing system.</p> <p>3 I'd like you to focus only on configurations 2, 3 and</p> <p>4 5 for purposes of this claim.</p> <p>5 Are configurations 2, 3 and 5 an electronic</p> <p>6 sourcing system in your opinion as the Court has</p> <p>7 defined it?</p> <p>8 A They are.</p> <p>9 Q Do configurations 2, 3 and 5 have a collection of</p> <p>10 catalogs of items stored in electronic format?</p> <p>11 A They do.</p> <p>12 Q Do configurations 2, 3 and 5 have a first set of</p> <p>13 predetermined criteria associated with said collection</p> <p>14 of catalogs?</p> <p>15 A They do.</p> <p>16 Q Do configurations 2, 3 and 5 have a second set of</p> <p>17 predetermined criteria associated with items from each</p> <p>18 of said catalogs?</p> <p>19 A They do.</p> <p>20 Q Do configurations 2, 3 and 5 have a catalog</p> <p>21 selection protocol, said catalog selection protocol</p> <p>22 relying on said first set of predetermined criteria to</p> <p>23 select less than said entire collection of catalogs</p> <p>24 and including matching a vendor identification code</p> <p>25 with a subset of said collection of catalogs wherein</p>	<p style="text-align: right;">836</p> <p style="text-align: center;">WEAVER - DIRECT 836</p> <p>1 number from said predetermined third party.</p> <p>2 Do configurations 2, 3 and 5 satisfy that claim</p> <p>3 element?</p> <p>4 A They do using the UNSPSC codes.</p> <p>5 Q Do you have an opinion as to whether or not Lawson</p> <p>6 induces infringement of its customers by providing an</p> <p>7 electronic sourcing system that's capable of doing all</p> <p>8 of these elements of Claim 29?</p> <p>9 A My opinion is that they do.</p> <p>10 Q Earlier I asked you whether or not these five</p> <p>11 configurations in the manner that they are configured</p> <p>12 as we've defined them had any kind of substantial</p> <p>13 non-infringing use if they had at least two product</p> <p>14 catalogs available to them. Do you recall that?</p> <p>15 A I recall the question.</p> <p>16 Q With respect to indirect infringement as to all</p> <p>17 the claims you have just identified for any of the</p> <p>18 configurations that are the subject of indirect</p> <p>19 infringement, do you have an opinion as to whether or</p> <p>20 not Lawson would contribute to infringement if those</p> <p>21 systems as configured had no substantial</p> <p>22 non-infringing use?</p> <p>23 A I didn't understand the question.</p> <p>24 Q Sure. Let me go back. Earlier you went through</p> <p>25 this issue of whether or not there was a substantial</p>

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<p style="text-align: right;">937</p> <p style="text-align: center;">RALEIGH - DIRECT 937</p> <p>1 A That's correct.</p> <p>2 Q And Lawson's Professional Services Organization</p> <p>3 also provides services that are referred to as upgrade</p> <p>4 consulting services; is that correct?</p> <p>5 A That's correct.</p> <p>6 Q And those upgrade services would involve assisting</p> <p>7 the clients with upgrading from one version of a</p> <p>8 Lawson system to the next released version of that</p> <p>9 system; is that correct?</p> <p>10 A That's correct.</p> <p>11 Q Lawson's Professional Services Organization also</p> <p>12 provides technical development services to customers</p> <p>13 such as interface development and customization</p> <p>14 development services; is that correct?</p> <p>15 A We do at times, yes.</p> <p>16 Q Lawson's Professional Services Organization also</p> <p>17 offers services to Lawson's customers that are</p> <p>18 referred to as learning services; is that correct?</p> <p>19 A That's true.</p> <p>20 Q Among the learning services that Lawson's</p> <p>21 Professional Services Organization provides to</p> <p>22 Lawson's customers would be public instructor led</p> <p>23 training in one of Lawson's offices or on site</p> <p>24 instructor led training for a specific customer at</p> <p>25 their site; is that correct?</p>	<p style="text-align: right;">939</p> <p style="text-align: center;">RALEIGH - DIRECT 939</p> <p>1 customers with -- and I'm reading from the first line</p> <p>2 there. Instructions on the key setup components and</p> <p>3 processing functionality of the inventory control</p> <p>4 application; is that correct?</p> <p>5 A That's correct.</p> <p>6 Q And among the training included in that course</p> <p>7 would be, in following along with the second sentence,</p> <p>8 instructions on the key setup components and</p> <p>9 processing functionality -- excuse me, instructions</p> <p>10 concerning how to set up the item master associated</p> <p>11 with the inventory control application; is that</p> <p>12 correct?</p> <p>13 A Yes, that's right.</p> <p>14 Q Turn to page 6 of that exhibit, please. Do you</p> <p>15 see on that page there's a course entitled,</p> <p>16 Requisition Self Service 8.1-9.0?</p> <p>17 A Yes.</p> <p>18 Q Lawson also offers a course entitled, Requisition</p> <p>19 Self Service 8.1/9.0, which introduces major features</p> <p>20 of requisition self service such as requisition</p> <p>21 approvals, receiving, and the shopping experience</p> <p>22 which includes searching the catalog for items, using</p> <p>23 shopping lists, ordering specials or services, and</p> <p>24 ordering by categories; is that correct?</p> <p>25 A Yes.</p>
<p style="text-align: right;">938</p> <p style="text-align: center;">RALEIGH - DIRECT 938</p> <p>1 A Sure.</p> <p>2 MS. ALBERT: Mike, if you would, could we</p> <p>3 have Plaintiff's Exhibit 202.</p> <p>4 Q And, Ms. Raleigh, that is in Volume I of your</p> <p>5 binders.</p> <p>6 THE COURT: Before you go anywhere, what was</p> <p>7 the exhibit number for that Frank deposition? You're</p> <p>8 going to have to put it in the record because the</p> <p>9 court reporter wasn't taking it down. Just look it up</p> <p>10 and tell me later.</p> <p>11 Go ahead, Ms. Albert.</p> <p>12 Q Do you have Plaintiff's Exhibit 202?</p> <p>13 A I do.</p> <p>14 Q Is Plaintiff's Exhibit 202 a catalog of online</p> <p>15 courses that Lawson offers to its customers?</p> <p>16 A Yeah. It's a catalog that was published at a</p> <p>17 certain point in time, but yes.</p> <p>18 Q Can you turn, please, to page 5 of that exhibit,</p> <p>19 and the Bates number on that page ends with 4027?</p> <p>20 A I'm there.</p> <p>21 Q Do you see at the top of the page there's a course</p> <p>22 entitled inventory control 8.1/9.0 X?</p> <p>23 A I do.</p> <p>24 Q And Lawson offers this two-day course entitled</p> <p>25 Inventory Control 8.1/9.0 X that provides its</p>	<p style="text-align: right;">940</p> <p style="text-align: center;">RALEIGH - DIRECT 940</p> <p>1 Q In this course, Lawson enables its customers to</p> <p>2 have an experience using an actual Lawson training</p> <p>3 system that would have the requisition self service</p> <p>4 application installed; is that correct?</p> <p>5 A Yes.</p> <p>6 Q I believe I'm done with that document.</p> <p>7 A Okay.</p> <p>8 Q Lawson's Professional Services Organization also</p> <p>9 provides services to Lawson's customers that consist</p> <p>10 of installing the Lawson software on the customers'</p> <p>11 hardware; is that correct?</p> <p>12 A Yes.</p> <p>13 Q And you previously mentioned that Lawson provides</p> <p>14 implementation services to its customers. Do you</p> <p>15 recall that?</p> <p>16 A Yes.</p> <p>17 Q Among the implementation services that Lawson</p> <p>18 provides to its customers, those services would</p> <p>19 include assistance with designing the configuration of</p> <p>20 the Lawson software to meet the customer's business</p> <p>21 requirements; is that correct?</p> <p>22 A Yes.</p> <p>23 Q Also included among the implementation services</p> <p>24 that Lawson would provide to its customers would be</p> <p>25 assisting the customer with developing test scripts</p>

<p>965</p> <p>1 it.</p> <p>2 You can call the lady back. Just disregard</p> <p>3 the answer for now. You can call her back and put her</p> <p>4 on in your case if you want to, but right now we're</p> <p>5 talking about what she asked. So the objection is</p> <p>6 sustained.</p> <p>7 BY MR. SCHULTZ:</p> <p>8 Q During your direct examination with Ms. Albert,</p> <p>9 she talked about converting data?</p> <p>10 A Yes.</p> <p>11 Q What is your understanding with respect to</p> <p>12 conversion of data into the item master in terms of</p> <p>13 who does it?</p> <p>14 MS. ALBERT: Objection, ambiguous. I asked</p> <p>15 specifically about one implementation for Jackson.</p> <p>16 THE COURT: I think you asked who did the</p> <p>17 conversion, and that's fair game for him to ask</p> <p>18 further about that.</p> <p>19 MS. ALBERT: I think his question was</p> <p>20 broader.</p> <p>21 THE COURT: It is.</p> <p>22 MS. ALBERT: Than just this Jackson.</p> <p>23 THE COURT: It is, but have you heard about</p> <p>24 that camel that will sticks his nose under the tent?</p> <p>25 Okay.</p>	<p>967</p> <p>1 Q I'd like to turn you now to table 3.5, which is on</p> <p>2 page 17 of the document. If you'd look down on the</p> <p>3 table, it's Bates number ending in 5376.</p> <p>4 A I'm there.</p> <p>5 THE COURT: Is that master file and</p> <p>6 configuration table value building and scope.</p> <p>7 MR. SCHULTZ: That is exactly it, Your Honor.</p> <p>8 BY MR. SCHULTZ:</p> <p>9 Q Do you recall testifying to this table earlier?</p> <p>10 A I do.</p> <p>11 Q And you had some discussion regarding Eclipsys.</p> <p>12 Who is Eclipsys?</p> <p>13 A Eclipsys is the vendor of the legacy software. So</p> <p>14 it's the software that Jackson was using that we</p> <p>15 replaced.</p> <p>16 Q What was your involvement with this RFP and</p> <p>17 statement of work process with Jackson?</p> <p>18 A Ultimately, I was the person who oversaw the</p> <p>19 execution of the work, but I participated at various</p> <p>20 points along the way throughout the RFP and the</p> <p>21 creation of the SOW.</p> <p>22 Q In this table, there are some terms that are used</p> <p>23 under file. One of the them is vendor master, one is</p> <p>24 item master, one is vendor catalog. Whose terms are</p> <p>25 those?</p>
<p>966</p> <p>1 BY MR. SCHULTZ:</p> <p>2 Q Ms. Raleigh, do you remember the question? Maybe</p> <p>3 I'll just ask it again.</p> <p>4 A If you could.</p> <p>5 Q In a conversion of legacy information into the</p> <p>6 item master information, who's in charge of doing the</p> <p>7 data conversion?</p> <p>8 A Those responsibilities are typically shared</p> <p>9 between Lawson and the customer. There are a variety</p> <p>10 of steps in the overall process, and some of those</p> <p>11 steps, certainly the education on how to get the data</p> <p>12 formatted into the right file format, and how to use</p> <p>13 the tools that will load it, those are almost always</p> <p>14 responsibilities that Lawson will take because the</p> <p>15 customer wouldn't know how to do it if it weren't for</p> <p>16 our assistance.</p> <p>17 THE COURT: Didn't you answer this question</p> <p>18 in answering about the tables on 16, what was Lawson's</p> <p>19 and what was the customer's responsibility?</p> <p>20 THE WITNESS: For the scope of this</p> <p>21 implementation, I did.</p> <p>22 THE COURT: That's what he's talking about</p> <p>23 now.</p> <p>24 Q Who selected the data?</p> <p>25 A The customer.</p>	<p>968</p> <p>1 A Those would be Jackson's terms.</p> <p>2 Q Have they any relation to the Lawson system?</p> <p>3 A No, not in this context here, no.</p> <p>4 Q You also, if you'll look under the vendor catalog,</p> <p>5 which is item 3, you mentioned earlier that there's a</p> <p>6 Lawson response in bold letters?</p> <p>7 A Correct.</p> <p>8 Q Could you explain why there's a Lawson response in</p> <p>9 bold letters in paragraph 3?</p> <p>10 A So you have to understand that the Public Health</p> <p>11 Trust of Miami is a government institution. So they</p> <p>12 have very strict laws about the way that they request</p> <p>13 for proposals and the way that they write contracts</p> <p>14 with their vendors. So under the scope of that,</p> <p>15 certain portions of the information provided here came</p> <p>16 from Jackson.</p> <p>17 So the first several columns of this table would</p> <p>18 have only come from Jackson because only Jackson would</p> <p>19 have known what systems they used, what data there</p> <p>20 was, what they needed to get into our system.</p> <p>21 Lawson's responsibility would be to respond to</p> <p>22 those, right, in terms of how are we going to</p> <p>23 accommodate those requests or those business needs, if</p> <p>24 you will, that Jackson has articulated here.</p> <p>25 So in this particular situation, it was Lawson --</p>

1 the afternoon on Tuesday, it looks like. If not, you
2 may be kicking off on Wednesday morning, it depends.
3 My wife criticizes me substantially for
4 checking out the NOAA weather and other weather items
5 like the Weather Channel, and she accuses me of being
6 an old man with nothing to do because I do that, but
7 there are times when it comes into play. And I saw
8 that there is a very significant snowstorm supposed to
9 hit the Midwest, and I don't want you-all to go home
10 over the weekend and get trapped there.
11 So be advised that being trapped in the snow
12 is not a sufficient excuse not to start the trial.
13 Mr. Carr will be ready to go.
14 And I am not, I want you to know, being paid
15 by any merchant in town to keep you-all here.
16 All right. Thank you very much. Have a nice
17 weekend. Get some rest.
18 (The proceedings were adjourned at 5:17 p.m.)
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<p>990</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 11, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>992</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp, and Mr. David Young represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, we are, Your Honor. 12 THE COURT: What did you all need to talk about? 13 MS. STOLL-DeBELL: We actually resolved it, Your 14 Honor, between the time we that mentioned -- 15 THE COURT: Tell them to bring the jury in. What do 16 we have this morning? 17 MR. ROBERTSON: The first witness we're calling this 18 morning is Mr. Keith Lohkamp, Your Honor. He's a Lawson 19 employee. I have a number of binders associated with the 20 witnesses this morning. I want to make sure my paralegal -- 21 oh. 22 23 (Jury in.) 24 25 THE COURT: Good morning, ladies and gentlemen. All</p>
<p>991</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>993</p> <p>1 right, we have a witness. Next witness. 2 MR. ROBERTSON: Mr. Keith Lohkamp. 3 THE COURT: All right, Keith Lohkamp. 4 5 KEITH LOHKAMP, 6 a witness, called by the plaintiff, having been first duly 7 sworn, testified as follows: 8 DIRECT EXAMINATION 9 BY MR. ROBERTSON: 10 Q Good morning, Mr. Lohkamp. 11 A Good morning. 12 Q Mr. Lohkamp, you are a Lawson Software employee; correct? 13 A Yes, I am. 14 Q And you are a product strategist for supply chain 15 management; correct? 16 A Yes. 17 THE COURT: Can we get the witness to spell his last. 18 Q Can you please spell your last name, sir, for the record. 19 A It's L-o-h-k-a-m-p. 20 Q Can you explain to the jury essentially what supply chain 21 management is? 22 A Supply chain management involves the procurement of goods 23 and services and the management of the inventory related to 24 managing those goods. It also includes, can include the sell 25 side, so selling those goods and services as well.</p>

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<p>1010</p> <p>1 A Yes, for certain vendors.</p> <p>2 Q I'd like to talk to you a little bit about the</p> <p>3 requisitions module if we could.</p> <p>4 A Okay.</p> <p>5 Q That's part of the core three modules we talked about for</p> <p>6 the S3 procurement product; right?</p> <p>7 A Yes.</p> <p>8 Q Isn't it true that more often than not Lawson's customers</p> <p>9 in the public sector have some sort of requisition module or</p> <p>10 application they've acquired from Lawson?</p> <p>11 A I believe that's correct.</p> <p>12 Q Let's talk a little bit about requisition self-service for</p> <p>13 a moment if we could, sir. Would it be fair to say that the</p> <p>14 requisition self-service application is intended to be</p> <p>15 user-friendly?</p> <p>16 A That is the intent.</p> <p>17 Q That's one of its goals; right?</p> <p>18 A Yes.</p> <p>19 Q This requisition self-service application that Lawson</p> <p>20 offers, that provides the ability of hundreds, perhaps even</p> <p>21 thousands of individuals at a customer to have access to this</p> <p>22 procurement capability at their desktop or laptop PC; correct?</p> <p>23 A Yes, for the requisitioning capability.</p> <p>24 Q Isn't it, in fact, how Lawson markets this requisition</p> <p>25 self-service application, by saying, in effect, you can now</p>	<p>1012</p> <p>1 that up to one user --</p> <p>2 THE COURT: Okay. Excuse me. Go ahead.</p> <p>3 Q All right. So I'm clear on this, this requisition</p> <p>4 self-service application differs from the requisition module in</p> <p>5 it's more of a widespread application that can be used by</p> <p>6 multiple users as opposed to the requisitions module in which</p> <p>7 typically the requisitions department is authorized to make</p> <p>8 purchases and not all these other employees?</p> <p>9 A Requisition self-service is designed to be available</p> <p>10 through a web browser and available to more people.</p> <p>11 Q Now, you call some of these things modules and some of</p> <p>12 these things applications, but really that's terminology you</p> <p>13 just use in the way you market it; isn't that right?</p> <p>14 A It's terminology from the marketing, how we market and</p> <p>15 sell it.</p> <p>16 Q It's still software; right?</p> <p>17 A Still software, yes.</p> <p>18 Q One of the things you can do with this requisition</p> <p>19 self-service application is you can click on a drop-down menu</p> <p>20 for find/shop to specify to search a catalog; isn't that right?</p> <p>21 A It's a find/shop search catalog.</p> <p>22 Q Requisition self-service has that capability; right?</p> <p>23 A Yes, it has that drop-down menu.</p> <p>24 Q And a user can also input keywords into a search box in</p> <p>25 this requisition self-service application and the user</p>
<p>1011</p> <p>1 distribute that capability to many of your employees to have</p> <p>2 the ability to search for matching items, build requisitions,</p> <p>3 and generate multiple purchase orders; correct?</p> <p>4 A We market it as a way for them to search those items and</p> <p>5 create requisitions.</p> <p>6 Q And then you need the other modules in order to do the --</p> <p>7 generate the requisition and purchase orders and complete the</p> <p>8 transaction; correct?</p> <p>9 A Right. You need the purchase order to generate the</p> <p>10 purchase.</p> <p>11 THE COURT: Excuse me just a minute. If a vendor</p> <p>12 with whom the customer has a need to interact has a large list</p> <p>13 of items, and each one of these people over here of these</p> <p>14 tables, the lawyers, they are different customers or different</p> <p>15 employees of the customer, could Mr. Carr, one of those people</p> <p>16 over here, have one segment of the vendor items available to</p> <p>17 him because he's in department A, and Mr. McDonald have another</p> <p>18 segment of the same vendor's items but not the same ones</p> <p>19 because he's in department B, et cetera? Could that be done in</p> <p>20 this system?</p> <p>21 THE WITNESS: In that example, we would load all the</p> <p>22 items into the item master, and then certain departments, you</p> <p>23 may restrict who has access to certain items in the item master</p> <p>24 so that an individual in a particular department may not be</p> <p>25 able to buy, say, computers, for example. So you could set</p>	<p>1013</p> <p>1 interface to locate products; isn't that right?</p> <p>2 A Yes, they can.</p> <p>3 Q You have some familiarity with a standard known as the</p> <p>4 universal standard products and services classification code,</p> <p>5 also known as the UNSPSC code; correct?</p> <p>6 A Yes.</p> <p>7 Q And the UNSPSC code can be assigned to items in the Lawson</p> <p>8 procurement suite and used in a way to navigate in this</p> <p>9 requisition self-service application we've been talking about;</p> <p>10 isn't that right?</p> <p>11 A Yes.</p> <p>12 Q And so this -- actually where is the UNSPSC load for</p> <p>13 inputting that data? How do you do that?</p> <p>14 A For importing the UNSPSC code?</p> <p>15 Q Classification codes.</p> <p>16 A Okay. So all the commodity structure, so all the codes</p> <p>17 and the hierarchy are loaded into inventory control.</p> <p>18 Q Inventory control module has the capability to load that</p> <p>19 as offered; right?</p> <p>20 A Yes.</p> <p>21 Q So out of the box, inventory control module, one of these</p> <p>22 core modules that make up this S3 product we've talking about</p> <p>23 has that capability to get those UNSPSC classification codes</p> <p>24 right into it; right?</p> <p>25 A Yes.</p>

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<p style="text-align: right;">1154</p> <p>Lohkamp - Redirect 1154</p> <p>1 Dale Christopherson.</p> <p>2 THE COURT: How long is this going to take?</p> <p>3 MR. ROBERTSON: Your Honor, I'm trying to cut it back</p> <p>4 considerably. I think I'd be less than 45 minutes.</p> <p>5 THE COURT: Mr. Niemeyer, how long is his examination</p> <p>6 going to be?</p> <p>7 MR. ROBERTSON: Less than an hour.</p> <p>8 THE COURT: Let's go. There was a lot of stuff that</p> <p>9 that could have been excised from that.</p> <p>10 MR. ROBERTSON: I tried to limit it, Your Honor, but</p> <p>11 both parties get to cross-designate, so...</p> <p>12 THE COURT: 611 is in effect in full force.</p> <p>13</p> <p>14 DALE CHRISTOPHERSON,</p> <p>15 a witness, called by the plaintiff, having been first duly</p> <p>16 sworn, testified as follows:</p> <p>17</p> <p>18 MR. ROBERTSON: May I proceed, Your Honor?</p> <p>19 THE COURT: Please.</p> <p>20</p> <p>21 DIRECT EXAMINATION</p> <p>22 BY MR. ROBERTSON:</p> <p>23 Q Will you state your full name for the record, sir?</p> <p>24 A Dale Arnold Christopherson.</p> <p>25 Q And you are currently the director of development at</p>	<p style="text-align: right;">1156</p> <p>1 nine plus you have to do that; isn't that right?</p> <p>2 A In nine plus?</p> <p>3 Q Any version nine and above?</p> <p>4 A Oh, any version nine and above, that's correct.</p> <p>5 Q There are several versions of this software we've been</p> <p>6 talking about; correct?</p> <p>7 A Yes, there are.</p> <p>8 Q And there's a separate license fee associated with Lawson</p> <p>9 system foundation; is that correct?</p> <p>10 A That's correct.</p> <p>11 Q Now, there's been a lot of discussion about these vendor</p> <p>12 catalogs. A customer can import a vendor catalog into the item</p> <p>13 master of the Lawson system; isn't that right?</p> <p>14 A They can go basically through a three-step process, yes.</p> <p>15 Q And you are aware also of this UNSPSC we've been talking</p> <p>16 about?</p> <p>17 A I certainly am.</p> <p>18 Q So isn't it true that you can use the UNSPSC to find items</p> <p>19 from different vendors that were all cross-referenced using the</p> <p>20 same product category?</p> <p>21 A Let me think about what you are really saying there.</p> <p>22 Could you restate that?</p> <p>23 Q Sure. Isn't it true that a user of the Lawson system that</p> <p>24 has this UNSPSC capability can find items from different</p> <p>25 vendors that were all cross-referenced to the same product</p>
<p style="text-align: right;">1155</p> <p>1 Lawson Software; correct?</p> <p>2 A That's correct.</p> <p>3 Q Then in your role as the director of development, you have</p> <p>4 responsibilities for these software modules that we've been</p> <p>5 talking about, Lawson requisition self-service, Lawson</p> <p>6 procurement punchout, Lawson purchase order, Lawson</p> <p>7 requisitions, Lawson inventory control, and Lawson EDI;</p> <p>8 correct?</p> <p>9 A Those are some of the many that I do have under my</p> <p>10 control, yes.</p> <p>11 Q You are familiar also with the Lawson system foundation;</p> <p>12 is that right?</p> <p>13 A Depends on how deep you want to go into it, but, yes, I am</p> <p>14 familiar with it at some length.</p> <p>15 Q You were asked in your deposition whether Lawson system</p> <p>16 foundation is a technology layer that sits below these current</p> <p>17 applications we've been talking about. Do you recall that?</p> <p>18 A I certainly do.</p> <p>19 Q You said it was?</p> <p>20 A Yes, it was and still is.</p> <p>21 Q And so isn't it true now that all customers of Lawson are</p> <p>22 required to license the Lawson system foundation in order to</p> <p>23 use the current version of the Lawson applications?</p> <p>24 A That's correct.</p> <p>25 Q And in this procurement version nine plus, any version</p>	<p style="text-align: right;">1157</p> <p>1 category?</p> <p>2 A That's correct, yes.</p> <p>3 Q The shopping cart in Lawson requisition self-service can</p> <p>4 be dynamically built from results of conducting searches in the</p> <p>5 item master; isn't that right?</p> <p>6 A That is correct.</p> <p>7 Q And it's also true that the shopping cart can also be</p> <p>8 dynamically built using the results of searches in the vendor</p> <p>9 punchout catalogs; right?</p> <p>10 A That is also correct.</p> <p>11 Q And when the user clicks a checkout in the items in your</p> <p>12 shopping cart, they are moved into the requisition system, and</p> <p>13 an actual requisition is created; isn't that right?</p> <p>14 A I would actually define that slightly different.</p> <p>15 Q All right. Do you recall giving a deposition in this</p> <p>16 case?</p> <p>17 A I certainly do.</p> <p>18 Q And you were under oath?</p> <p>19 A Uh-huh.</p> <p>20 Q I believe you have your deposition transcript. It should</p> <p>21 be in the first volume.</p> <p>22 A Yep.</p> <p>23 Q Could you go to page 77? Excuse me. I misspoke. 177.</p> <p>24 A 177?</p> <p>25 Q Yes, sir.</p>

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<p>1158</p> <p>1 A Okay. I'm not there yet.</p> <p>2 Q Okay, take your time.</p> <p>3 A Okay, 177.</p> <p>4 Q Starting at about line 18?</p> <p>5 A Starting with question, and then on the right-hand screen?</p> <p>6 Q Let me read the question for you.</p> <p>7 Question: And then on the right-hand screen in the card,</p> <p>8 here you have four items that have been included in your</p> <p>9 shopping cart. What happens to that when you click checkout?</p> <p>10 Your answer: When you click checkout, then it would move</p> <p>11 that information into the requisition system and actually</p> <p>12 create a requisition.</p> <p>13 Did you give that answer to that question at that time?</p> <p>14 A I certainly did.</p> <p>15 Q Okay. Thank you. Once a requisition is approved, the</p> <p>16 requisition is released and then transferred to the purchase</p> <p>17 order system; correct?</p> <p>18 A That's correct, after it's been approved.</p> <p>19 Q Talking just now about procurement punchout, when users</p> <p>20 have filled their shopping carts, virtually speaking, and</p> <p>21 checked out from the vendor website using the Lawson</p> <p>22 procurement punchout, the chosen items and their prices are</p> <p>23 returned to the Lawson server and a requisition is created</p> <p>24 using the Lawson requisition self-service application; correct?</p> <p>25 A Can you state that again? The second half of it basically</p>	<p>1160</p> <p>1 multi-vendor catalog capability is a punchout trading partner</p> <p>2 of Lawson; correct?</p> <p>3 A That's correct. They are on the list, yes.</p> <p>4 Q It's an accurate statement to say that if Lawson could not</p> <p>5 market a requisition module, it could not effectively compete</p> <p>6 in the supply chain management product market?</p> <p>7 A I would say that that would be an accurate statement, yes.</p> <p>8 Q It's also accurate to say if Lawson could not offer a</p> <p>9 purchase order module, Lawson could not effectively compete in</p> <p>10 the supply chain management product market?</p> <p>11 A That would also be correct.</p> <p>12 Q You've heard a lot of talk about the implementation and</p> <p>13 installation services that Lawson offers. I just want to be</p> <p>14 clear that Lawson will provide implementation services to</p> <p>15 assist its customers with importing vendor catalog data into</p> <p>16 the item master.</p> <p>17 A I didn't hear a question in that, sir.</p> <p>18 Q Let me restate it then. Perhaps I misspoke. Is it true</p> <p>19 that Lawson provides implementation services to assist its</p> <p>20 customers with importing vendor catalog data into the item</p> <p>21 master?</p> <p>22 A If the customer so chooses and wants that service, yes, we</p> <p>23 do.</p> <p>24 Q So for most situations where a customer licenses the</p> <p>25 supply chain management suite or the procurement modules we've</p>
<p>1159</p> <p>1 is where I lost you. ^ you check out at the customer, not the</p> <p>2 customer but the vendor site and then it was at that point</p> <p>3 where I got lost.</p> <p>4 Q Let me start over. Let's hear the whole question. When</p> <p>5 users have filled their shopping carts, virtually speaking, and</p> <p>6 checked out from the vendor website using Lawson procurement</p> <p>7 punchout, the chosen items and their price are then returned to</p> <p>8 the Lawson server, and a requisition is created using the</p> <p>9 Lawson requisition self-service application; correct?</p> <p>10 A That's correct.</p> <p>11 Q Isn't it true that the current version of the Lawson</p> <p>12 procurement punchout includes the capability to punch out to</p> <p>13 multi-vendor catalogs?</p> <p>14 A That's correct.</p> <p>15 Q One of those examples of a site that you can go that is a</p> <p>16 multi-catalog vendor -- excuse me, multi-vendor catalog, is</p> <p>17 SciQuest; correct?</p> <p>18 A That's correct.</p> <p>19 Q Another example of a multi-vendor catalog site that's</p> <p>20 available for the punchout procurement is an organization known</p> <p>21 as GHX; correct?</p> <p>22 A That is correct.</p> <p>23 Q That stands for Global Healthcare Exchange?</p> <p>24 A That's correct.</p> <p>25 Q And Global Healthcare Exchange that provides this</p>	<p>1161</p> <p>1 been talking about in supply chain management, Lawson</p> <p>2 professional services is going to provide the actual</p> <p>3 installation and implementation services for that system;</p> <p>4 correct?</p> <p>5 A That's correct, yes.</p> <p>6 Q All existing Lawson customers today are under maintenance</p> <p>7 contracts with Lawson; correct?</p> <p>8 A That's correct.</p> <p>9 Q So all of the supply chain -- excuse me. All of the</p> <p>10 supply -- let me restate that. All of the S3 procurement</p> <p>11 products that are under contract today with Lawson customers,</p> <p>12 they have maintenance contracts; is that right?</p> <p>13 A Could you restate that?</p> <p>14 Q Yeah. I'm sorry. It was a bad question. With respect to</p> <p>15 the Lawson S3 procurement product that's at issue here, any</p> <p>16 customer that has that product is under an existing maintenance</p> <p>17 contract?</p> <p>18 A That's correct.</p> <p>19 Q There's been a lot of talk about this RFP process, and I</p> <p>20 don't want to go through it again in detail, certainly, but</p> <p>21 there is a standard set of answers for those common questions</p> <p>22 that customers have about the S3 procurement product; correct?</p> <p>23 A That is correct, yes.</p> <p>24 Q I think if you'll look in your book to Exhibit 117.</p> <p>25 A Okay.</p>

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1 truly apologize, and maybe you'll get another judge to handle
2 the rest of the case.

3 MR. McDONALD: I'm not sure I picked up all that --

4 THE COURT: I'm asking if you said something and I
5 forgot what it was, because I actually don't remember you
6 saying anything.

7 MR. McDONALD: You didn't miss a thing. We haven't
8 formulated our position, Your Honor. I have a couple concerns,
9 though, I can flag and maybe give --

10 THE COURT: That would be helpful to talk about it.

11 MR. McDONALD: Well, this language about "by a
12 vendor" means at some point in time. I think the "by a vendor"
13 for one thing was pretty much agreed to at the Markman hearing,
14 what it did mean, and do inject the concept in time, of time
15 into a phrase like "by a vendor" could create some confusion, I
16 think, do more harm than good, actually. We would probably
17 object to that, but I haven't finalized my position.

18 THE COURT: But I think it's quite clear from the
19 specification that it's an antecedent event to the use of the
20 invention no matter how you cut it.

21 MR. McDONALD: I just think --

22 THE COURT: I understand what you are saying. Think
23 about it and see what you --

24 MR. McDONALD: The other concern I have is anything
25 we do with that, because our experts who have given opinions

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1 relating to claim construction, I'm concerned that if we now
2 move the ball on what the claims mean, what is the implication
3 of that for the testimony that's already been given, the
4 testimony that's yet to come that the Court repeatedly says has
5 to be limited to what's in the expert reports, there were prior
6 decisions by the Court relating to prior art exclusions and
7 things like that. I think there's many implications of making
8 any changes here, so I'm concerned about that.

9 THE COURT: I think -- I'm not sure there are a
10 lot -- that is not a claim construction answer. That's an
11 instruction, and the fact of the matter is that it is not at
12 all unusual for Courts to give revised claim constructions
13 during the trial.

14 In fact, for a good while, it was common to give the
15 claim construction only as part of the instructions. Now, I've
16 never done that just because I didn't want to put myself
17 through that agony, but that's what happens sometimes, and in
18 that event, experts have to take their positions -- take out
19 their position and see what happens. So we'll see.

20 MR. McDONALD: In this case, the experts were allowed
21 to give their reports after the Court's Markman ruling, so I
22 think that really changes the dynamic.

23 THE COURT: Okay. Anything else? Thank you. We'll
24 see you all tomorrow at nine o'clock.

25 (Court adjourned.)

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<p>1188</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 12, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1190</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, Mr. 6 Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. You said you wanted to see me 13 before the jury comes in. 14 MR. McDONALD: Yeah, there's basically three issues 15 we wanted to raise. 16 THE COURT: The court reporters always can hear 17 better if you come to the lectern. 18 MR. McDONALD: There's basically three issues that we 19 wanted to raise this morning. One is our third witness in our 20 case that we start today is Ms. Raleigh. 21 THE COURT: Third witness in what? 22 MR. McDONALD: In our case when we start presenting 23 our case today. We have Mr. Richard Lawson first, Mr. 24 Christopherson second, and then Hannah Raleigh was supposed to 25 come back and be third today.</p>
<p>1189</p> <p>1189</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1191</p> <p>1191</p> <p>1 She was supposed to be back last night from New York, 2 and New York is getting hammered real bad by this blizzard. 3 She's trying to get another flight, but her flight is not going 4 to get her here until after the trial day is over today. So 5 we've been trying to work something out with ePlus about what 6 we would do next because we haven't disclosed any exhibits or 7 anything for the next witness. 8 THE COURT: Just call the next witness, the expert or 9 whoever you've got here. There's no magic to the order of 10 putting people on. 11 MR. McDONALD: The next witness we would have 12 actually here is Mr. Lohkamp, calling him back. 13 THE COURT: Good. 14 MR. McDONALD: That's fine. They haven't had a 15 chance to get ready for their cross-examination. 16 THE COURT: They'll be ready. They knew basically 17 what you were going to do anyway. They're not going to do it 18 on your cross-examination; they were going to do redirect, so 19 we're going to reverse things. 20 MR. McDONALD: We do have a deposition of Ms. 21 O'Loughlin on the RIMS prior art issue that we can move up in 22 the order. 23 THE COURT: Is that carefully edited to eliminate the 24 trash? 25 MR. McDONALD: That's being worked on as we speak,</p>

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<p style="text-align: right;">1232</p> <p>1 A In general, sure. It's a remote computer.</p> <p>2 Q Using this demonstrative, would you explain the source</p> <p>3 code architecture of Lawson's system and the components you've</p> <p>4 illustrated in your demonstrative?</p> <p>5 A Yes. The portion on the left labeled client is, contains</p> <p>6 components that run in the user's web browser. Some items</p> <p>7 labeled there are JavaScript which I mentioned earlier is a</p> <p>8 programming language that executes within the browser. HTML</p> <p>9 are the actual pages that display the information.</p> <p>10 The right portion on the right labeled service side are</p> <p>11 the components that run on the server. There is a Java -- box</p> <p>12 labeled Java web application. That's essentially a web server</p> <p>13 that feeds the data to the web browser.</p> <p>14 Below that, the area labeled Lawson transaction manager</p> <p>15 and Lawson 4GL COBOL comprise what I would call the business</p> <p>16 logic of the application and contains the Lawson 4GL COBOL</p> <p>17 code. The transaction manager and supporting features are also</p> <p>18 -- my understanding is they are termed by Lawson as Lawson</p> <p>19 system foundation. So it's sort of the back end portion of</p> <p>20 that.</p> <p>21 There's the database indicated there which contains the</p> <p>22 data for the application, and the final box up on the right</p> <p>23 labeled MCI is just an alternate mechanism for the Java</p> <p>24 components to talk to the database.</p> <p>25 Q Now, you discussed in your demonstrative that there are</p>	<p style="text-align: right;">1234</p> <p>1 a container of sorts that holds that code, determines what's</p> <p>2 running at what time, and moves the data into and out of it.</p> <p>3 It's required to run those applications.</p> <p>4 Q Could you describe at a high level what the functionality</p> <p>5 is with respect to the Lawson transaction manager?</p> <p>6 A Yes. The Lawson transaction manager would be the key</p> <p>7 component there that actually runs the COBOL programs for the</p> <p>8 requisition, inventory control, and purchase order</p> <p>9 applications.</p> <p>10 Q And how does the Lawson transaction manager execute the</p> <p>11 4GL applications, or what does it do?</p> <p>12 A Well, so as I tried to describe, it determines which</p> <p>13 programs are running at what time. It moves data into and out</p> <p>14 of the associated working storage structures, and it collects</p> <p>15 the results. It may also intermediate access to the database,</p> <p>16 provide access to the database.</p> <p>17 Q And you talked about this DB thin API. First of all, what</p> <p>18 is an API?</p> <p>19 A The term API, the acronym API stands for application</p> <p>20 programmer interface, and it is just a collection of functions</p> <p>21 or utilities, features which can be used by the programmer.</p> <p>22 Q And what do you mean by the term DB thin?</p> <p>23 A In this case, it is a database API which just means it's a</p> <p>24 collection of features that allow the Java code to talk to the</p> <p>25 database. The term thin to me implies that it is a streamlined</p>
<p style="text-align: right;">1233</p> <p>1 both Lawson web-based applications and Lawson 4GL applications</p> <p>2 within the Lawson system. Could you describe at a high level</p> <p>3 the kinds of functionality that are implemented in the system</p> <p>4 using the 4GL application?</p> <p>5 A Yes, the Lawson 4GL COBOL code implements the feature of</p> <p>6 the S3 system including requisition, inventory control, and</p> <p>7 purchase order.</p> <p>8 Q Could you describe at a high level the functionality</p> <p>9 implemented in the system using the web-based applications?</p> <p>10 A The web-based components including the Java web, or Java</p> <p>11 application server and the components that run the browser</p> <p>12 together comprise a web-based interface to that Lawson 4GL</p> <p>13 functionality. They are sort of an overlay or an add-on that</p> <p>14 provides that browser-based access to those components.</p> <p>15 Q What are some examples of the Lawson web-based</p> <p>16 applications that you studied?</p> <p>17 A I believe Lawson calls the system the requisition</p> <p>18 self-service component, and I believe they also called it --</p> <p>19 refer to their punchout component as a web-based component.</p> <p>20 Q Now, you also mentioned this Lawson system foundation.</p> <p>21 Could you briefly explain why the Lawson system foundation is</p> <p>22 important to the functioning of the Lawson system?</p> <p>23 A Yes. So the Lawson system foundation, inasmuch as it</p> <p>24 contains the transaction manager, is responsible for running</p> <p>25 the Lawson 4GL COBOL programs. It is a runtime environment or</p>	<p style="text-align: right;">1235</p> <p>1 or otherwise not complex mechanism. It's a delegating</p> <p>2 mechanism that delegates to another layer.</p> <p>3 Q What do you mean by delegate?</p> <p>4 A So it's sort of a thin wrapper around some more</p> <p>5 complicated functionality. It passes off requests to another</p> <p>6 layer for additional processing.</p> <p>7 Q Now, you've shown in your demonstrative that the system</p> <p>8 has a database associated with it. Have you prepared another</p> <p>9 demonstrative to help you explain the database that's used by</p> <p>10 the system?</p> <p>11 A Yes, I have.</p> <p>12 MS. ALBERT: Mike, if we could, could we have slide</p> <p>13 number 85, please.</p> <p>14 Q Is this a demonstrative that you prepared to illustrate</p> <p>15 the database?</p> <p>16 A Yes, it is.</p> <p>17 Q Could you describe at a high level the nature of the</p> <p>18 database?</p> <p>19 A Yes. So it is what's known as a relational database.</p> <p>20 Lawson refers to this database as the item master database.</p> <p>21 The database contains numerous tables. Tables within a</p> <p>22 database, you can roughly analogize to files in a filing</p> <p>23 cabinet. They may contain different types of information.</p> <p>24 There are a number of actual tables from the Lawson item</p> <p>25 master database illustrated here. The one that I'll mention, a</p>

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<p>1236</p> <p>1 key table is the ITEMMAST table on the left of this diagram</p> <p>2 which contains information about items that can be</p> <p>3 requisitioned within the system, and from -- another table that</p> <p>4 I'll point out is the POITEMVEN which contains vendor</p> <p>5 information pertaining to specific items within the ITEMMAST</p> <p>6 table.</p> <p>7 Q You mentioned this term relational database. What is a</p> <p>8 relational database?</p> <p>9 A The term relational just means that a piece of data within</p> <p>10 the database can refer to or point to another piece of data in</p> <p>11 various ways.</p> <p>12 Q Would you explain the difference between when you say the</p> <p>13 item master database and when you are referring to this item</p> <p>14 master or ITEMMAST table?</p> <p>15 A Yes. So the ITEMMAST table is a specific table within the</p> <p>16 database. More generally, Lawson documentation refers to the</p> <p>17 database as a whole or collectively as the item master</p> <p>18 database, presumably drawing its name from that key table.</p> <p>19 THE COURT: The ITEMMAST table has what in it?</p> <p>20 THE WITNESS: It consequence /TAEUPBS information</p> <p>21 about items which can be requisitioned.</p> <p>22 Q What are some of the types of information about the items</p> <p>23 that are contained in that table?</p> <p>24 A It contains an item number for the item, a textual</p> <p>25 description of the item, and other information about the item.</p>	<p>1238</p> <p>1 inventory control systems.</p> <p>2 Q And is that a more -- can you say whether or not that's a</p> <p>3 more user-friendly interface?</p> <p>4 A Certainly, yes. It's the main reason for adding a</p> <p>5 web-based interface to an application, is to provide increased</p> <p>6 or ease of use and flexibility.</p> <p>7 Q Could you explain from a source code perspective what</p> <p>8 Lawson's procurement punchout application is?</p> <p>9 A Yes. So procurement punchout is a feature of the -- which</p> <p>10 runs in the context of the requisition self-service application</p> <p>11 that allows a user to connect to a remote Lawson partner vendor</p> <p>12 site, perform -- well, it communicates with the site.</p> <p>13 The Lawson system communicates with the site over a secure</p> <p>14 communications channel, performs a handshake using a protocol</p> <p>15 known as cXML which is a business standard for this type of</p> <p>16 communication. It allows the user to perform certain shopping</p> <p>17 operations on the partner site, the vendor site, and ultimately</p> <p>18 to have those shopping results returned to the Lawson system</p> <p>19 for incorporation into their shopping cart.</p> <p>20 Q I'd like to turn now to the category search functionality</p> <p>21 that you studied. Does the source code of Lawson system</p> <p>22 implement functionality that allows a user to search for items</p> <p>23 by category?</p> <p>24 A Yes, it does. There is an option from the find/shop menu,</p> <p>25 the requisition self-service that brings up a category search</p>
<p>1237</p> <p>1 Q Now, you have a few other tables illustrated on your</p> <p>2 demonstrative. Could you provide us with a high level</p> <p>3 description of the purpose of the table that's listed R-E-Q</p> <p>4 header or REQHEADER?</p> <p>5 A Yes. The abbreviation R-E-Q is short for requisition, so</p> <p>6 this is the requisition header table, and it is involved in</p> <p>7 both shopping cart and requisition functionality.</p> <p>8 Q And then you have another table that is referred to as P-O</p> <p>9 inter F-A-C, POINTERFAC. What is the purpose behind that</p> <p>10 table?</p> <p>11 A The POINTERFAC table is involved in making requisitions</p> <p>12 available to the purchase order system. It's kind of an</p> <p>13 intermediary.</p> <p>14 Q And I believe you talked about the POITEMVEN table. You</p> <p>15 have another table shown that's labeled KWDDetail. Can you</p> <p>16 explain at a high level the purpose of that table?</p> <p>17 A Yes. Here the acronym, the abbreviation KWD stands for</p> <p>18 keyword, so it would be keyword detail table, and it is an</p> <p>19 index used in keyword searches.</p> <p>20 Q Now, we referenced this requisition self-service</p> <p>21 application earlier. Can you explain to the jury from a source</p> <p>22 code perspective what the requisition self-service application</p> <p>23 is?</p> <p>24 A Yes. So, it is a -- as I described, it is a web-based</p> <p>25 interface to the Lawson purchase order, requisition, and</p>	<p>1239</p> <p>1 screen.</p> <p>2 Q What, if any, database tables does the source code use to</p> <p>3 conduct this category search functionality?</p> <p>4 A There are two. One is called IC item code, ICITEMCODE,</p> <p>5 and the other is the previously mentioned ITEMMAST table.</p> <p>6 Q Do both of those tables belong to that same item master</p> <p>7 database that you described earlier?</p> <p>8 A Yes, they do.</p> <p>9 Q What information is contained within that ICITEMCODE table</p> <p>10 that would be relevant to searching by category?</p> <p>11 A The ICITEMCODE table contains the textual description of</p> <p>12 the levels of the UNSPSC hierarchy and the corresponding codes</p> <p>13 that are assigned to those levels.</p> <p>14 Q And what information does the item master table store that</p> <p>15 is relevant to searching by category?</p> <p>16 A The item master table contains -- in addition to the item</p> <p>17 descriptions, contains the corresponding UNSPSC codes</p> <p>18 indicating where they belonged in that hierarchy.</p> <p>19 Q When the category selection is chosen by a user from that</p> <p>20 find/shop menu, what is the first thing that happens in the</p> <p>21 source code?</p> <p>22 A When a user chooses to bring up a category search screen,</p> <p>23 a request is made from the user's web browser to the back end</p> <p>24 of the Lawson system. Specifically Lawson calls this kind of</p> <p>25 request a data request, and it is -- it is handled by the --</p>

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<p>1240</p> <p>1 passed from the Java code to the -- using the DB thin API that</p> <p>2 I mentioned previously and results in a search of the</p> <p>3 ICITEMCODE table for the top levels of the UNSPSC hierarchy.</p> <p>4 Those top level initial part of the drill-down are</p> <p>5 returned to the -- formatted as XML and returned to the</p> <p>6 client's web browser where it's presented to the user to make</p> <p>7 their initial choice.</p> <p>8 Q After the system retrieves these top level categories from</p> <p>9 the database, would you explain what happens in the source code</p> <p>10 as the user navigates the available hierarchy of categories?</p> <p>11 A Yes. So the process is very similar to that of retrieving</p> <p>12 those initial top level categories with the exception that as</p> <p>13 the user chooses levels in the browser, the corresponding</p> <p>14 UNSPSC codes are conveyed with the request to the back end</p> <p>15 system, and the ICITEMCODE table is searched to find the</p> <p>16 corresponding levels, the children or the child levels</p> <p>17 underneath the selected level. That information is returned</p> <p>18 and then formatted for the user. In this fashion they can</p> <p>19 drill down, expanding from the parent to the child.</p> <p>20 Q When the user finds his desired category --</p> <p>21 THE COURT: Excuse me. The parent is the larger and</p> <p>22 the child just means the more specific; is that right?</p> <p>23 THE WITNESS: Yes. If you imagine like a family</p> <p>24 tree, there is a parent, and the children kind of branch out</p> <p>25 and grandchildren branch out from there. That's what I meant</p>	<p>1242</p> <p>1 which allows the user to limit the search, the scope of the</p> <p>2 search to Lawson certain origin fields and optionally provide</p> <p>3 what it's called an exclusion term.</p> <p>4 Q What do you mean by an origin field?</p> <p>5 A It determines where in the information associated with an</p> <p>6 item the term was located. So there are multiple tables which</p> <p>7 can relate to a given item within the ITEMMAST table, and</p> <p>8 different textual and numeric information may be found in those</p> <p>9 tables. They named those different locations as origin fields,</p> <p>10 and the user can limit the search if they wish.</p> <p>11 Q Can you give us an example of an origin field?</p> <p>12 A Well, so the primary description within the ITEMMAST</p> <p>13 table, there's a field for the description, is the particular</p> <p>14 origin field. There is also a vendor description in the</p> <p>15 POITEMVEN table. That is another example of an origin field.</p> <p>16 Q Have you prepared a demonstrative to help explain how the</p> <p>17 keyword search functionality is implemented in the source code?</p> <p>18 A Yes, I have.</p> <p>19 MS. ALBERT: Mike, could we have slide 24, please.</p> <p>20 Q Is this the demonstrative that you prepared?</p> <p>21 A Yes, it is.</p> <p>22 Q What, if any, database tables are involved in this keyword</p> <p>23 search functionality?</p> <p>24 A Well, there are seven depicted here, but the four that I</p> <p>25 would describe as first are the keyword tables at the bottom.</p>
<p>1241</p> <p>1 in terms of that hierarchy.</p> <p>2 Q Once the user finds his desired category and chooses to</p> <p>3 view the items that belong to that category, will you explain</p> <p>4 what happens in the source code to cause the items that belong</p> <p>5 to that category to be displayed?</p> <p>6 A Yes. So when the user selects the items link, the UNSPSC</p> <p>7 codes for that particular level of the hierarchy are packaged</p> <p>8 up as part of a request. In this case, it is what's known as a</p> <p>9 transaction request. It's passed from the user's browser to</p> <p>10 the back end, the server component of the Lawson system.</p> <p>11 This results in a Lawson 4GL COBOL program called RQIB</p> <p>12 being executed which searches the ITEMMAST table for items</p> <p>13 which have the corresponding UNSPSC codes. The resulting item</p> <p>14 information is then formatted as XML and returned to the</p> <p>15 client's web browser where it is formatted as a search result</p> <p>16 list.</p> <p>17 Q Now, Mr. Niemeyer, I'd like to turn to the keyword search</p> <p>18 functionality in the Lawson system that you studied. Does the</p> <p>19 source code of Lawson system implement functionality that</p> <p>20 allows a user to search by a keyword?</p> <p>21 A Yes. The user may choose search catalog option from the</p> <p>22 find/shop menu of the requisition self-service application</p> <p>23 which brings up a keyword search screen with a field in which</p> <p>24 the user can enter one or more search terms. That screen has</p> <p>25 some additional functionality, advanced search functionality</p>	<p>1243</p> <p>1 These are prefixed with the KWD abbreviation, and they are</p> <p>2 keyword synonym, keyword master, keyword detail, and keyword</p> <p>3 setup. These tables comprise an index of the available search</p> <p>4 terms, and then there are three tables above, ITEMMAST which I</p> <p>5 previously mentioned, POITEMVEN, and a table called ITEMLOC,</p> <p>6 I-T-E-M-L-O-C, are used after the search is performed to</p> <p>7 retrieve the item information.</p> <p>8 Q And do all of these tables belong to that item master</p> <p>9 database that you illustrated earlier?</p> <p>10 A Yes, they do.</p> <p>11 Q What data is contained or what is the keyword detail</p> <p>12 table?</p> <p>13 A Keyword detail table is the key index of search terms, and</p> <p>14 it relates a specific search term which has been found to the</p> <p>15 origin field in which it was located and the item number of the</p> <p>16 item in which it was found.</p> <p>17 Q And what types of data is contained in that table?</p> <p>18 A Well, as I said, there's an item number, a keyword, and an</p> <p>19 origin field.</p> <p>20 Q Would you please explain briefly how the functionality to</p> <p>21 build the keyword detail table is implemented in the source</p> <p>22 code?</p> <p>23 A So my understanding is when the system is set up</p> <p>24 initially, users determine which origin fields are to be</p> <p>25 enabled for search, and the terms are gathered from the data</p>

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<p>1244</p> <p>1 and placed into the keyword detail table. For each item, there</p> <p>2 is a corresponding keyword and an origin field.</p> <p>3 Q And what database tables are indexed by the keyword detail</p> <p>4 table?</p> <p>5 A My understanding is that at minimum, the ITEMMAST,</p> <p>6 POITEMVEN, and ITEMLOC tables.</p> <p>7 Q In the context of this source code, what is the purpose of</p> <p>8 having an index like the keyword detail table?</p> <p>9 A It's common practice to create an index to -- an</p> <p>10 optimization to increase the speed of the search and to</p> <p>11 eliminate to need to search the whole collection of data when</p> <p>12 you can condense it to an index that you can search more</p> <p>13 rapidly.</p> <p>14 Q Can you explain how the item vendor table or the POITEMVEN</p> <p>15 table is used in the implementation of a keyword search in the</p> <p>16 source code?</p> <p>17 A After the search is performed against the keyword tables</p> <p>18 and item information is being retrieved, corresponding vendor</p> <p>19 information for the items is retrieved from the POITEMVEN</p> <p>20 table.</p> <p>21 Q Do the records in the item vendor or POITEMVEN table link</p> <p>22 in any way to the records in the item master or ITEMMAST table?</p> <p>23 A Yes, they do. They contain a field which holds the item</p> <p>24 number for a given item in the ITEMMAST table.</p> <p>25 Q Have you prepared a demonstrative to help you explain how</p>	<p>1246</p> <p>1 browser and hits the search button, the search term is conveyed</p> <p>2 as part of a request to the server side components which causes</p> <p>3 the Lawson 4GL COBOL program called RQIC to be executed. The</p> <p>4 RQIC program ultimately performs a search of the keyword detail</p> <p>5 table for occurrences of that term that have been previously</p> <p>6 indexed.</p> <p>7 Any matching records from the keyword detail table are</p> <p>8 then used to find the corresponding items in the ITEMMAST table</p> <p>9 and data gets gathered from the PO and ITEMLOC tables. All of</p> <p>10 those results are formatted as XML and ultimately returned to</p> <p>11 the item web browser and formatted as a search word.</p> <p>12 Q When the search code searches the keyword tables to locate</p> <p>13 the keywords that the user typed in, does the source code</p> <p>14 search the item master table at all?</p> <p>15 A No, it does not. It only searches the keyword detail</p> <p>16 table and the associated keyword tables.</p> <p>17 Q Now, I'd like to turn to the functionality for the adding</p> <p>18 items to a shopping cart and building a requisition. Does the</p> <p>19 source code of the Lawson system implement functionality that</p> <p>20 allows a user to select desired items for requisition from a</p> <p>21 list of results returned from either this category or keyword</p> <p>22 search that you discussed?</p> <p>23 A Yes, it implements a shopping cart functionality whereby</p> <p>24 the user can indicate that an item from a search result should</p> <p>25 be added to the shopping cart. Items can be added and removed</p>
<p>1245</p> <p>1 the information in these two tables can be related?</p> <p>2 A Yes, I have.</p> <p>3 MS. ALBERT: Mike, can we have slide 68, please.</p> <p>4 Q Is this the demonstrative that you prepared?</p> <p>5 A Yes, it is.</p> <p>6 Q Now, using your demonstrative, would you please explain</p> <p>7 how records in the item vendor or POITEMVEN table can be</p> <p>8 related to records in the item master table or ITEMMAST table?</p> <p>9 A Yes. So within the ITEMMAST table, or the item master</p> <p>10 table, there is a field called IITEM which holds the item</p> <p>11 number for that item. That item number uniquely identifies the</p> <p>12 item within the ITEMMAST table.</p> <p>13 The PO item vendor table then can -- given record within</p> <p>14 that table can refer to an item within the ITEMMAST table using</p> <p>15 that unique number. It's what's known as a key field in the</p> <p>16 ITEMMAST table. Within the POITEMVEN table, there's a field</p> <p>17 called PIV item which holds that number, and, therefore, if you</p> <p>18 want to, for a given item in the POITEMVEN table, you can point</p> <p>19 back to a specific unique item within the ITEMMAST.</p> <p>20 MS. ALBERT: Mike, could we go back to slide 24,</p> <p>21 please.</p> <p>22 Q Now, going back to your demonstrative on keyword search</p> <p>23 query execution, can you explain how the keyword search</p> <p>24 functionality is implemented in the Lawson system source code?</p> <p>25 A Yes. So after the user enters a search term in the</p>	<p>1247</p> <p>1 until checkout operation is performed. Similar to the way you</p> <p>2 shop on Amazon or another web business.</p> <p>3 Q Now, what, if any, database tables are involved in this</p> <p>4 shopping cart functionality?</p> <p>5 A There are three. Two of them are prefixed with the term</p> <p>6 REQ. One is called REQHEADER and the other is called REQLINE.</p> <p>7 The third is called PO interface which we mentioned before,</p> <p>8 POITERFAC.</p> <p>9 Q And what information is stored in that REQLINE table</p> <p>10 that's relevant to the shopping cart functionality?</p> <p>11 A The REQLINE table holds the individual line items</p> <p>12 representing items that were selected to be added to the</p> <p>13 shopping cart.</p> <p>14 Q Does this REQLINE table also contain a status field?</p> <p>15 A Yes, it does. In addition to the item information, it</p> <p>16 contains a status which can indicate that the item is either --</p> <p>17 while in the shopping cart, it's in a state called unreleased.</p> <p>18 Q What does that mean?</p> <p>19 A It means that it is part of a shopping cart and not yet</p> <p>20 part of a requisition.</p> <p>21 Q And is there another status that can be indicated in this</p> <p>22 status field in addition to the unreleased status that you</p> <p>23 mentioned?</p> <p>24 A Yes. So I'd just say both the REQLINE and REQHEADER table</p> <p>25 that I mentioned which are involved in this contain a status</p>

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<p>1364</p> <p>1 vendor catalog, not Lawson.</p> <p>2 Likewise, Dr. Weaver never asserted Lawson practiced</p> <p>3 the step of determining whether a selected matching item is</p> <p>4 available in inventory; instead, merely opining in a conclusory</p> <p>5 fashion that punchout allows the step to happen while admitting</p> <p>6 that Lawson did not have any idea what was available in the</p> <p>7 inventory of the third-party vendors, and with respect to</p> <p>8 searching for matching items, ePlus argues a user searches on a</p> <p>9 vendor's website using a vendor search engine, which, again, is</p> <p>10 a step that Lawson does not practice.</p> <p>11 The systems claims are likewise deficient. Claim</p> <p>12 three of the '683 patent and claims one, two, six, nine, 21,</p> <p>13 22, and 29 of the '516 patent all require multiple catalogs.</p> <p>14 Dr. Weaver opined that these claims were infringed by the</p> <p>15 punchout product because punchout allows users to have access</p> <p>16 to external vender catalogs, not Lawson catalogs.</p> <p>17 Claim one of '172 patent is also a system claim which</p> <p>18 requires a database containing data relating to items</p> <p>19 associated with at least two vendors maintained so that</p> <p>20 selected portions of the database may be searched separately.</p> <p>21 Dr. Weaver opined that this limitation was met by the separate</p> <p>22 databases of the external punchout site, but there is no</p> <p>23 dispute that Lawson has not maintained separate databases of</p> <p>24 the external punchout sites. Those external vendor catalogs</p> <p>25 are maintained by the vendor.</p>	<p>1366</p> <p>1 that's related to direct infringement. Under direct</p> <p>2 infringement, one party has to actively engage in every single</p> <p>3 step or method claim. If, however, a party has an agency</p> <p>4 relationship with another, in certain limited circumstances,</p> <p>5 the Court has allowed that to be a direct infringement.</p> <p>6 For indirect infringement to occur, there must be at</p> <p>7 least one direct infringer. That is to say that someone must</p> <p>8 be practicing the steps.</p> <p>9 THE COURT: Are you saying joint infringement doesn't</p> <p>10 apply to indirect infringement?</p> <p>11 MS. HUGHEY: In theory you could have two parties</p> <p>12 engaging in joint infringement and a third party guilty of --</p> <p>13 THE COURT: But on this record, is there any theory</p> <p>14 of joint infringement that exists as to indirect infringement?</p> <p>15 Any basis any jury could find that?</p> <p>16 MS. HUGHEY: I don't believe so, Your Honor, no.</p> <p>17 THE COURT: Why?</p> <p>18 MS. HUGHEY: On this record, there's no -- on this</p> <p>19 record, ePlus could not prove joint infringement because it</p> <p>20 hasn't demonstrated that there is an agency relationship</p> <p>21 between Lawson and any third party.</p> <p>22 THE COURT: I thought you said, though, that that</p> <p>23 made it direct infringement.</p> <p>24 MS. HUGHEY: That's right. Joint infringement is</p> <p>25 direct infringement.</p>
<p>1365</p> <p>1 ePlus cannot rely on the doctrine of joint</p> <p>2 infringement to resolve the issue of direct infringement as it</p> <p>3 has failed to show that Lawson has the required control over</p> <p>4 the third parties or that Lawson performs the remaining steps.</p> <p>5 In a situation in which more than one party is</p> <p>6 required to perform the steps of a claimed method, there is no</p> <p>7 infringement unless one party exercises control or direction</p> <p>8 over the entire process such that every step is attributable to</p> <p>9 the controlling party.</p> <p>10 The same requirement for direction and control</p> <p>11 applies to the system claims as well. Lawson does not exercise</p> <p>12 control or direction over any third party, suppliers, vendors,</p> <p>13 distributors, manufacturers, or others who sell items to</p> <p>14 Lawson's customers. Likewise, Lawson exercises no control over</p> <p>15 its customers. Lawson does not have an agency relationship</p> <p>16 with any party that performs any of the remaining steps from</p> <p>17 the system or method claims.</p> <p>18 While Lawson may reach an agreement with certain</p> <p>19 vendors to allow them to provide services to its clients --</p> <p>20 THE COURT: What's the difference, Ms. Hughey,</p> <p>21 between joint infringement and induced infringement in this</p> <p>22 case on this record? I know conceptually what the difference</p> <p>23 is, but is there really any difference in this case between</p> <p>24 those two?</p> <p>25 MS. HUGHEY: With respect to joint infringement,</p>	<p>1367</p> <p>1 THE COURT: I understand, but I also asked you,</p> <p>2 because some of the instructions you all tendered suggested</p> <p>3 that joint infringement an application in the indirect</p> <p>4 infringement context. Are you contending that or not?</p> <p>5 MS. HUGHEY: I don't believe that we're contending</p> <p>6 that the joint infringement is the same thing as indirect</p> <p>7 infringement or that it has applicability to indirect</p> <p>8 infringement. It's possible that --</p> <p>9 THE COURT: So the joint infringement doesn't -- do</p> <p>10 you understand it doesn't even apply to indirect infringement?</p> <p>11 MS. HUGHEY: I think it could apply to indirect --</p> <p>12 THE COURT: On the facts of this case.</p> <p>13 MS. HUGHEY: Correct, Your Honor. Correct. As I was</p> <p>14 saying, Lawson does not control that vendor or contractually</p> <p>15 obligate them to do anything. Likewise, Lawson does not have</p> <p>16 control over what its customers do, as they act for their own</p> <p>17 benefit and under their own control. Because there is no</p> <p>18 single direct infringer, there can be no indirect infringement</p> <p>19 either.</p> <p>20 THE COURT: All right.</p> <p>21 MS. HUGHEY: I have two more points, Your Honor.</p> <p>22 Unless you have a question? With respect to the unaccused</p> <p>23 systems, Lawson has provided no basis for a reasonable jury to</p> <p>24 find for ePlus with respect to certain unaccused systems.</p> <p>25 THE COURT: If it's not accused, what do I care? I</p>

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<p>1368</p> <p>1 don't need to rule on an unaccused system.</p> <p>2 MS. HUGHEY: They were potentially accused in the</p> <p>3 pretrial order, but then during trial, it became clear they</p> <p>4 were no longer accused. I am not sure ePlus would actually</p> <p>5 oppose this part of the motion.</p> <p>6 THE COURT: What are you talking about, unaccused?</p> <p>7 Looking for the approvals on the purchasing agent?</p> <p>8 MS. HUGHEY: I'm sorry, Your Honor. Certain systems</p> <p>9 -- I think you remember that Dr. Weaver accused five systems of</p> <p>10 infringing, and then he went through claim by claim, but he did</p> <p>11 not accuse every system of accusing every claim.</p> <p>12 THE COURT: You don't need judgment on any system</p> <p>13 that they don't have any evidence on. Is there anything else?</p> <p>14 MS. HUGHEY: One final thing. I don't believe that</p> <p>15 ePlus is asserting the doctrine of equivalents infringement,</p> <p>16 but I'd like to make a record here that we move for judgment as</p> <p>17 a matter of law to the extent that they would suggest</p> <p>18 otherwise.</p> <p>19 MR. ROBERTSON: We will stipulate we haven't made the</p> <p>20 doctrine of equivalents argument with respect to the</p> <p>21 infringement.</p> <p>22 MS. HUGHEY: That's all I have, Your Honor. We'd be</p> <p>23 willing to brief any of these issues further.</p> <p>24 THE COURT: Thank you.</p> <p>25 MR. ROBERTSON: Thank you, Your Honor. I'm sure you</p>	<p>1370</p> <p>1 theoretically can that be the case, absolutely. Do you want me</p> <p>2 give you a scenario in the facts of this case in which it could</p> <p>3 be occurring, I'm happy to do so.</p> <p>4 THE COURT: What is your theory? Are you pressing</p> <p>5 joint infringement in the indirect infringement context? If</p> <p>6 you aren't, I don't need to hear anything further about it, and</p> <p>7 since it's such a rare animal, even if it's not in the extant</p> <p>8 one or ever was, just fish or cut bait.</p> <p>9 MR. ROBERTSON: Your Honor, this joint infringement</p> <p>10 position is a defense that Lawson is taking because they are</p> <p>11 arguing that they don't have control or direction over their</p> <p>12 punchout partners. Now, I think we marshalled the substantial</p> <p>13 evidence that showed that is not the case, but how could an</p> <p>14 indirect or induced infringement scenario --</p> <p>15 THE COURT: They don't direct claims like that. Do</p> <p>16 you claim there is a joint infringement under the indirect</p> <p>17 infringement case you are presenting? I think that you don't.</p> <p>18 I think they, in fact, then -- they may say, well, even if its</p> <p>19 joint infringement, you are saying we don't have control, but</p> <p>20 in the first instance it's you who presses the point, so do you</p> <p>21 or do you not have a joint infringement claim under your theory</p> <p>22 of indirect infringement, or are you going to give it a mercy</p> <p>23 killing?</p> <p>24 MR. ROBERTSON: Your Honor, I don't want to give it a</p> <p>25 mercy killing because it shouldn't be killed, and let me</p>
<p>1369</p> <p>1 can appreciate that just like Your Honor, I've heard those</p> <p>2 arguments for the first time right now, so let me see if I can</p> <p>3 try and track them for you and answer any questions you might</p> <p>4 specifically have.</p> <p>5 We think we brought forth ample evidence of both</p> <p>6 direct infringement and induced infringement --</p> <p>7 THE COURT: Do you take the view that joint</p> <p>8 infringement applies in the indirect infringement claim?</p> <p>9 MR. ROBERTSON: I think there can be a joint</p> <p>10 infringement scenario in which Lawson aids, assists, abets,</p> <p>11 encourages their customers to indirectly -- to induce</p> <p>12 infringement, and that would be a situation, Your Honor, for</p> <p>13 example, if Your Honor concludes --</p> <p>14 THE COURT: What is the difference between that and</p> <p>15 contributory infringement then? I think it's very confusing to</p> <p>16 the jury to have this joint infringement issue in the case in</p> <p>17 the indirect infringement issue, and I don't even understand</p> <p>18 how it would apply on the facts of the case anyway.</p> <p>19 But forget about the facts of the case. Is there any</p> <p>20 case that holds joint infringement applies in indirect</p> <p>21 infringement charges?</p> <p>22 MR. ROBERTSON: I haven't seen one specifically, Your</p> <p>23 Honor.</p> <p>24 THE COURT: I haven't either. Never heard of it.</p> <p>25 MR. ROBERTSON: But, you know, if you want to ask me</p>	<p>1371</p> <p>1 explain why that's the case. Let me give you a scenario with</p> <p>2 where there can be an induced infringement in a joint</p> <p>3 infringement -- direct infringement case. You have --</p> <p>4 THE COURT: Huh-uh. I didn't ask about direct.</p> <p>5 MR. ROBERTSON: Yes, we are pressing an indirect</p> <p>6 infringement that could involve joint infringement, direct</p> <p>7 infringement.</p> <p>8 THE COURT: What is that?</p> <p>9 MR. ROBERTSON: What is it?</p> <p>10 THE COURT: Yes.</p> <p>11 MR. ROBERTSON: It is inducing someone, perhaps more</p> <p>12 than one party, to actually commit the direct infringement.</p> <p>13 THE COURT: Why isn't that induced infringement?</p> <p>14 MR. ROBERTSON: It is --</p> <p>15 THE COURT: -- under indirect infringement, and why</p> <p>16 isn't it then joint infringement under direct infringement?</p> <p>17 MR. ROBERTSON: I agree with Ms. Hughey that joint</p> <p>18 infringement is a direct infringement theory.</p> <p>19 THE COURT: That's all I'm asking you.</p> <p>20 MR. ROBERTSON: Okay. Then I'm sorry. I</p> <p>21 misapprehended Your Honor's question, but Ms. Hughey and I</p> <p>22 agree joint infringement is direct infringement.</p> <p>23 THE COURT: The instructions that both of you</p> <p>24 tendered did not distinguish, and some of the arguments that</p> <p>25 were being made suggested to me that you were pressing a theory</p>

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<p>1 of which I was unaware, and now that we've gotten that</p> <p>2 straight, what's the joint infringement theory under the direct</p> <p>3 infringement claims? In this case on this record.</p> <p>4 MR. ROBERTSON: Well, joint infringement sometimes is</p> <p>5 called divided infringement when a defendant wants to say that</p> <p>6 they are not directly controlling the actions of another, and</p> <p>7 the way I understood Ms. Hughey's argument to be is they say,</p> <p>8 we really don't know what these punchout trading partners are</p> <p>9 doing that we have. Once you go to their website, it's all up</p> <p>10 to them. So the evidence turns on whether or not there's</p> <p>11 direction and control with respect to what's been proffered so</p> <p>12 far before the Court.</p> <p>13 THE COURT: Direction and control of whom?</p> <p>14 MR. ROBERTSON: The third party punchout partners,</p> <p>15 Your Honor, their trading partners that they either have</p> <p>16 informal agreements with or formal agreements with in which</p> <p>17 they -- I think one of the intentions of the formal agreements</p> <p>18 is we're going to do this jointly. We're going to make a joint</p> <p>19 effort, combine our products.</p> <p>20 I asked Mr. Lohkamp, do you do that for the mutual</p> <p>21 benefit of both companies. He said absolutely. We heard</p> <p>22 evidence that the Lawson system controls the punchout process,</p> <p>23 that they provide the protocols. Mr. Lohkamp even called it</p> <p>24 the handshake that lets you get there. Dr. Weaver testified</p> <p>25 you can't -- you don't even leave the Lawson system, and when</p>	<p>1372</p> <p>1 demonstration that Dr. Weaver did a punchout, to go out and get</p> <p>2 the data and retrieve it, it still was branded with Lawson.</p> <p>3 You were framed within a Lawson website, and as Dr. Weaver</p> <p>4 said, you never left.</p> <p>5 So you can't even do the punchout process without the</p> <p>6 Lawson software. That's the first step. And then once you do</p> <p>7 do it, you are there, and you are retrieving the data, and you</p> <p>8 are putting it in your requisition, and you are building your</p> <p>9 purchase order just as the claims described.</p> <p>10 So that, Your Honor, I think is the only scenario in</p> <p>11 which I would think the joint infringement could arise at all</p> <p>12 if you even needed to go there, and I think in our papers we</p> <p>13 would argue first that this is not a situation of joint</p> <p>14 infringement, but even if it were, that it's been satisfied by</p> <p>15 the evidence that's been presented here.</p> <p>16 And so how do you induce that direct infringement</p> <p>17 which I think we're in agreement is joint infringement? Lawson</p> <p>18 induces it by first providing the functionality in its punchout</p> <p>19 software to do that. Second, it induces it by providing their</p> <p>20 customers with the guides, the implementation, the</p> <p>21 installation, the services. They provide all of that kind of</p> <p>22 evidence is evidence that they are abetting and assisting.</p> <p>23 So we think that the facts of this case, particularly</p> <p>24 Dr. Weaver who went through, you will recall, that eight-step</p> <p>25 protocol you need to do in order to set up this communication</p>
<p>1373</p> <p>1 you go to the website, there was that special URL that showed</p> <p>2 you had never left the Lawson system, that you are not at a</p> <p>3 commercial website. You are at a website that has been</p> <p>4 especially prepared for Lawson's customers using the</p> <p>5 procurement punchout.</p> <p>6 The customer has to say to Lawson, we want you to set</p> <p>7 this up. We'll tell you who our punchout partners are. Lawson</p> <p>8 then goes out, they either contract with them, or they make an</p> <p>9 arrangement if the protocols work, and we actually demonstrated</p> <p>10 the punchout process.</p> <p>11 So the argument becomes, boils down to this: Well,</p> <p>12 when you finally punched out, but you never left the Lawson</p> <p>13 system, you then can search content provided by the supplier,</p> <p>14 for example. But, of course, that's exactly why the whole</p> <p>15 arrangement was set up, for their joint effort and mutual</p> <p>16 benefit.</p> <p>17 So we think, quite frankly, Your Honor -- there's a</p> <p>18 recent decision called Akamai that came down from the Federal</p> <p>19 Circuit perhaps two weeks ago, and it was a situation of joint</p> <p>20 infringement, and we think if there were ever a situation that</p> <p>21 joint infringement applied through a factual scenario, it is</p> <p>22 this case. This case is the poster child for joint</p> <p>23 infringement because of the relationship that Lawson has with</p> <p>24 its punchout trading partners.</p> <p>25 You will remember, even when we were looking at the</p>	<p>1374</p> <p>1 links, and no one has ever denied or challenged the fact that</p> <p>2 it's Lawson that sets up this communication protocol and</p> <p>3 permits this process to happen, and Mr. Lohkamp even conceded,</p> <p>4 you can't do it without the punchout procurement software.</p> <p>5 So when you do that, you are inducing the direct</p> <p>6 infringement by the customers performing those steps of the</p> <p>7 method claims when they go through and they select catalogs</p> <p>8 which Dr. Weaver showed in his demonstration. They search</p> <p>9 those catalogs, they match items, they build a requisition, and</p> <p>10 they build and generate the purchase order.</p> <p>11 THE COURT: Thank you.</p> <p>12 MR. ROBERTSON: He showed how to do it both from an</p> <p>13 internal catalog database and -- which Lawson can set up in the</p> <p>14 customer's software, and an external catalog database which is</p> <p>15 the punchout.</p> <p>16 THE COURT: Thank you. Is there -- is this record</p> <p>17 now complete on the issue of willful infringement?</p> <p>18 MR. ROBERTSON: Of what, sir?</p> <p>19 THE COURT: Is the record complete on willful</p> <p>20 infringement?</p> <p>21 MR. ROBERTSON: I do not believe so. I thought we</p> <p>22 were going to reserve some of those things.</p> <p>23 THE COURT: What are you going to do and when are you</p> <p>24 going to do it?</p> <p>25 MR. ROBERTSON: Well, I thought we had bifurcated</p>
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<p style="text-align: right;">1376</p> <p>1 willful infringement. I contemplated that Your Honor might</p> <p>2 want to have a short hearing, perhaps a half a day, as to</p> <p>3 evidence on that.</p> <p>4 THE COURT: Could we use Monday or Saturday?</p> <p>5 MR. McDONALD: Let me go back and --</p> <p>6 THE COURT: Do you really have a case of willful</p> <p>7 infringement here?</p> <p>8 MR. ROBERTSON: I think one of the things, Your</p> <p>9 Honor -- certainly didn't contemplate that I was going to have</p> <p>10 to put on evidence in this portion of the case because I agreed</p> <p>11 to bifurcate that, but let me address that specifically.</p> <p>12 Number one, Lawson --</p> <p>13 THE COURT: The point is, if you haven't -- when are</p> <p>14 you going to put on the evidence of willful infringement, and</p> <p>15 basically what is it going to be if it's not already in? The</p> <p>16 question is, what did you do? Did you decide to put in what</p> <p>17 you had and let me decide it? We never did decide whether we</p> <p>18 were going to have a hearing. I was going to have to decide</p> <p>19 the issue, but we never did decide how we were going to do it</p> <p>20 unless my memory fails.</p> <p>21 MR. ROBERTSON: Your Honor --</p> <p>22 THE COURT: Do you have additional evidence on</p> <p>23 willfulness that isn't in the record at this time? That's all</p> <p>24 I want to know.</p> <p>25 MR. ROBERTSON: Let me think. I think there's</p>	<p style="text-align: right;">1378</p> <p>1 THE COURT: Do you have any case that says that?</p> <p>2 MR. ROBERTSON: Your Honor, I'll have to go and</p> <p>3 check. One of my colleagues reminded me of a case that I have</p> <p>4 not actually read and I don't want to represent to the Court.</p> <p>5 THE COURT: It's a good thing not to argue a case you</p> <p>6 haven't read.</p> <p>7 MR. ROBERTSON: I didn't want to do that.</p> <p>8 THE COURT: Unless you want me to decide on the bases</p> <p>9 of the cases I have read.</p> <p>10 MR. ROBERTSON: No, Your Honor. In fairness, I came</p> <p>11 here today to try and prepare to argue this. I was not</p> <p>12 thinking in terms of the representation of the Court what the</p> <p>13 willfulness case should be.</p> <p>14 I think you've heard some evidence that under the</p> <p>15 totality of the circumstances, you could consider as being</p> <p>16 evidence that would warrant a conclusion of willful</p> <p>17 infringement. I think there would be some additional evidence.</p> <p>18 Right now what comes to mind--</p> <p>19 THE COURT: We'll deal with that later. Thank you.</p> <p>20 MR. ROBERTSON: Do you need to hear any --</p> <p>21 THE COURT: No, thank you. The motion did not relate</p> <p>22 to willfulness, so I'm not going to deal with it. I was just</p> <p>23 asking you a question while you were standing up there.</p> <p>24 MR. ROBERTSON: Thank you.</p> <p>25 MS. HUGHEY: Your Honor, if I may, with respect to</p>
<p style="text-align: right;">1377</p> <p>1 evidence that Lawson had an opinion of counsel that it obtained</p> <p>2 early on and refused to turn over that opinion and stood on the</p> <p>3 privilege. While there is not an adverse inference the jury</p> <p>4 can draw --</p> <p>5 THE COURT: The jury doesn't draw that. I'm drawing</p> <p>6 it.</p> <p>7 MR. ROBERTSON: Well, I think if the Court wasn't</p> <p>8 aware, there was an opinion early on that was given --</p> <p>9 THE COURT: Didn't you all agree I did willfulness?</p> <p>10 Isn't that what you agreed?</p> <p>11 MR. ROBERTSON: Yes, sir.</p> <p>12 THE COURT: All right. I wanted to make sure --</p> <p>13 MR. ROBERTSON: In addition to the evidence that</p> <p>14 there's been nothing done by Lawson since they've been put on</p> <p>15 notice of this lawsuit in May 2009, no redesign, no good</p> <p>16 faith effort --</p> <p>17 THE COURT: Mr. Robertson, I'm not asking you to</p> <p>18 argue. I'm asking do you have any other evidence that you</p> <p>19 haven't put on. You tell me about willfulness. You tell me</p> <p>20 that there's an opinion of counsel that they declined to</p> <p>21 produce and stood on the privilege. Can the finder of fact</p> <p>22 draw from that an inference of willfulness?</p> <p>23 MR. ROBERTSON: I think the finder of fact can</p> <p>24 consider that in the totality of the circumstances which is the</p> <p>25 test for willfulness.</p>	<p style="text-align: right;">1379</p> <p>1 the issue of joint infringement, ePlus's counsel suggested that</p> <p>2 it was a defense, and that's not the case. ePlus always has</p> <p>3 the burden of proof on the issue of infringement, and it can</p> <p>4 pursue that burden of proof either through the direct</p> <p>5 infringement --</p> <p>6 THE COURT: Ms. Hughey, what he said was, he's not</p> <p>7 contending it's joint infringement, you are, saying that if it</p> <p>8 was any kind of infringement it's joint infringement and you</p> <p>9 win -- and he wins -- because you haven't any evidence of the</p> <p>10 elements of it, I believe; is that right, Mr. Robertson, or did</p> <p>11 I miss it?</p> <p>12 MR. ROBERTSON: My argument, Your Honor, was whether</p> <p>13 it's direct infringement just by Lawson committing all the</p> <p>14 steps or having the system, or whether it's joint infringement,</p> <p>15 we win either way.</p> <p>16 THE COURT: I understand that, but what you said was</p> <p>17 we don't think it's joint infringement, but even if it is, we</p> <p>18 win. The predicate of that sentence is, we don't think it's</p> <p>19 joint infringement, and that's what I am trying to ascertain.</p> <p>20 You said it was they who injected that question, the</p> <p>21 defendants injected that issue in, and you don't think it's</p> <p>22 joint infringement, but even if it is, you win. Is that your</p> <p>23 position or not?</p> <p>24 MR. ROBERTSON: That's our position, Your Honor.</p> <p>25 THE COURT: Okay, thank you very much. Now you know</p>

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<p style="text-align: right;">1468</p> <p>1 back to me with "published" first meaning, to issue 2 (printed or otherwise reproduced textual or graphic 3 material) for sale, and (2) to make publicly or 4 generally known. Those are the first two. And then 5 there's a third one, to issue newspapers, books, etc 6 and then fourth is to have one's work published. 7 And that's very typical of these other 8 definitions. 9 THE COURT: American Heritage, 4th edition, 10 says, No. 1, To prepare an issue (printed material). 11 For public distribution or sale. (2) To bring to the 12 public attention, announce. 13 The Merriam Webster New Edition says, "To 14 make generally known, announce publicly." Second one, 15 "To produce or release literature, information, 16 musical scores or sometimes recordings or art for sale 17 to the public." 18 The Pocket Oxford American Dictionary, did 19 y'all bring these with you or did you stimulate 20 business -- 21 MR. McDONALD: This was stimulated in 22 Richmond, Virginia, local economy, Your Honor. 23 THE COURT: The first one is "Prepare and 24 issue a book, newspaper, piece of music for public 25 sale, print something." (2) "Print something in a</p>	<p style="text-align: right;">1470</p> <p>1 think generally known was in several of the 2 dictionaries that you indicated. I think that's more 3 appropriate. 4 Remember, "published" still has to be read in 5 context of the patent, and we're talking about 6 electronic data here. So when you take electronic 7 data, and you put it in a vendor catalog database, 8 you're not making something publicly known, you're 9 just taking that data that has been made generally 10 known or disclosed by the vendor, and then you're 11 loading it into the database. 12 Now, who does that loading or how it's 13 modified in any way is not relevant to "generally 14 known" or "disclose." 15 Publicly now would suddenly become another 16 non-infringement gotcha that we've been talking about. 17 THE COURT: Well, go ahead, Mr. McDonald. 18 MR. McDONALD: Okay. 19 THE COURT: Anything else? 20 MR. McDONALD: Your Honor, just to be clear 21 as well, speaking of gotchas, as Mr. Robertson said, 22 basically, he's the one that's trying to turn this 23 into a gotcha. I'm fine going to the jury on a fair 24 and ordinary meaning. He's the one who is trying to 25 say, "I can't even present evidence anymore on these</p>
<p style="text-align: right;">1469</p> <p>1 book, newspaper or journal as to make it generally 2 known." (3) "Formally announce to read an edict or a 3 marriage ban." 4 MR. McDONALD: That last one, I don't think 5 we're using that last one about marriage. 6 THE COURT: I don't think that works, but 7 basically I think the way I've defined "published" 8 catches these, doesn't it? 9 MR. McDONALD: The problem I have, Your 10 Honor, that I don't think it does is when you've got 11 to make generally known, I think that should be 12 publicly to be consistent with these as well as Dr. 13 Weaver and the experts. So I would change the word 14 "generally" to "publicly." And then we've got that 15 phrase "or to disclose," which doesn't have any sort 16 of a public or sale related aspect to it. 17 So I would say that should be eliminated 18 entirely from it. I think it's very accurate to say 19 "published" simply means to make publicly known. 20 THE COURT: I'll take those dictionaries, and 21 I'll give you back yours, but I'll just take all of 22 them and look at them and frame something. I think 23 "disclosed" needs to be in there, but I'm not sure. 24 MR. ROBERTSON: Your Honor, may I address 25 this "publicly" now a new term has been injected? I</p>	<p style="text-align: right;">1471</p> <p>1 issues of how the accused database, the item master, 2 came into being." 3 These are clearly facts that are relevant 4 here. What if the vendor was the one who had selected 5 the desired items and added the information and 6 deleted the items and modified? Obviously, that would 7 be relevant. So the fact that somebody else does it 8 is also relevant to the converse. 9 And so he's the one that's trying to do the 10 gotcha here and preclude us from even being able to 11 present our case to the jury here by saying none of 12 this evidence that Lawson wants to present is even 13 relevant here. That's where the gotcha is coming in. 14 So Mr. Robertson is the one who keeps saying we 15 shouldn't use these claim constructions -- 16 THE COURT: Why should this come into into 17 evidence? You want to argue that it's not a catalog 18 because the customer of Lawson in the instance where 19 it's using a legacy system, for example, has pulled 20 from a bunch of catalogs things that it put together, 21 and you flipped it into the system when you into the 22 Lawson system. And somehow that information doesn't 23 constitute information that's published by a vendor 24 merely because it's gone through a relocation. 25 And that's not what the claim construction</p>

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<p>1472</p> <p>1 says. And that's not a fair reading of the patent.</p> <p>2 So maybe he's right that none of this comes in, that</p> <p>3 to the extent it is relevant, it's only marginally</p> <p>4 relevant, and it's too confusing to the jury to have</p> <p>5 to sort through all of this who put the material into</p> <p>6 the system, the structure that you all have</p> <p>7 constructed, that is the Lawson system.</p> <p>8 MR. McDONALD: But we're talking about the</p> <p>9 item master as being the thing that's being accused as</p> <p>10 being multiple catalogs, Your Honor, and I think as a</p> <p>11 fact matter, we should be able to show that doesn't</p> <p>12 satisfy this definition. The definition starts off by</p> <p>13 talking about an organized collection. That's the</p> <p>14 noun here. And then it goes on to say that's why it</p> <p>15 has to be published by a vendor. And that's very</p> <p>16 consistent with the patent. Any other way is</p> <p>17 inconsistent.</p> <p>18 THE COURT: I'm going to tell you now that</p> <p>19 you're not free to argue simply that -- you just</p> <p>20 argued that the only thing that's covered by the claim</p> <p>21 construction is a Sears catalog that is put into the</p> <p>22 system. And if that's what your theory is, you lose.</p> <p>23 And I'm going to find that you lose as a matter of law</p> <p>24 because that isn't what it's all about.</p> <p>25 And I think if that's what you're trying to</p>	<p>1474</p> <p>1 inconsistent --</p> <p>2 THE COURT: Everything that your customers</p> <p>3 look for is something that a vendor sells because what</p> <p>4 happens is when they use your system, your customer</p> <p>5 goes to buy it from the vendor who is selling it to</p> <p>6 them, and a requisition is made, a purchase order is</p> <p>7 made, and it goes to the vendor, and that's a typical</p> <p>8 sale, isn't it? It's a sale purchase. That's what it</p> <p>9 is.</p> <p>10 MR. McDONALD: The point is what's a catalog</p> <p>11 and what's not. That's what I'm talking about, and</p> <p>12 the shopping list is not a catalog. If I come up with</p> <p>13 a list of requisition items that I want to buy, that's</p> <p>14 not a catalog. That's not how these patents use that.</p> <p>15 They call them requisitions. They call them purchase</p> <p>16 orders. They call them something different from a</p> <p>17 catalog. And that's my concern that if we go too far</p> <p>18 on reconstruing the construction, that it's going to</p> <p>19 lead the jury to --</p> <p>20 THE COURT: You reconstruing the</p> <p>21 construction, I think. So anyway I think what I'm</p> <p>22 going to do is instruct the jury. And the question</p> <p>23 then is: On what the ordinary meaning is, do you know</p> <p>24 of any case that says the Court can't instruct them on</p> <p>25 what the ordinary meaning is?</p>
<p>1473</p> <p>1 do, then I think the answer is that Rule 403 keeps</p> <p>2 that whole line of evidence out. If that's what</p> <p>3 you're thinking, forget it, because it ain't going to</p> <p>4 happen. If you argue that in front of the jury, I'm</p> <p>5 going to tell the jury that that isn't permissible and</p> <p>6 I'll sustain a motion to strike it because it never</p> <p>7 was intended to do that.</p> <p>8 We may not have done the best job of claim</p> <p>9 construction here. I don't know. But in any event,</p> <p>10 whatever is going to happen is that we're not going to</p> <p>11 convert this into something that it wasn't and is not</p> <p>12 reasonably intended.</p> <p>13 MR. McDONALD: You have that Markman</p> <p>14 transcript, and if you take a look at that, you'll see</p> <p>15 that I was definitely talking about the issue that we</p> <p>16 have to have a definition that's consistent with the</p> <p>17 patent and consistent with the ordinary meaning of</p> <p>18 catalog that will exclude something like a shopping</p> <p>19 list or a list of products somebody buys instead of</p> <p>20 something somebody sells. That was all on the table</p> <p>21 at the Markman.</p> <p>22 And if we go too far the other way with the</p> <p>23 definition, Your Honor, I think we start grabbing</p> <p>24 things within the catalog definition that would not be</p> <p>25 considered within the ordinary meaning. It would be</p>	<p>1475</p> <p>1 MR. McDONALD: I'm not sure. We'll have to</p> <p>2 look for that, Your Honor. I'm not an aware of any</p> <p>3 case at this point.</p> <p>4 THE COURT: I don't know why it wouldn't be</p> <p>5 appropriate if there's a dispute about it. And you're</p> <p>6 offering Defendant's 371. I assume you did it in good</p> <p>7 faith believing that it was appropriate to do that.</p> <p>8 So I think I'm going to give it. I'm going to look at</p> <p>9 these definitions, if you don't mind loaning me your</p> <p>10 books for the evening.</p> <p>11 Now, the real issue is: Can you ask these</p> <p>12 questions? Why is it that this approach as shown in</p> <p>13 item information changes, which I think Mr. Robertson</p> <p>14 just read into the record in its entirety in the first</p> <p>15 three blocks, I don't know that you read the last</p> <p>16 three -- the last block. It says, "Customer loads new</p> <p>17 info into Lawson database." And then it goes to item</p> <p>18 location, item master, and vendor item. I think</p> <p>19 that's now the whole thing is in the record.</p> <p>20 But what difference does it make about</p> <p>21 whether the vendor changes the information to the new</p> <p>22 electronic format?</p> <p>23 MR. McDONALD: Because we're showing the</p> <p>24 distance between when this thing actually was anything</p> <p>25 that even resembles a catalog at the vendor end and</p>

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1 And there's also a case called SEB from the Federal
2 Circuit which has to do with the standard of intent
3 for the inducement infringement, which I understand
4 also includes a reckless disregard for the patent.

5 THE COURT: I want you to give Ms. Haggard
6 the citations for those two cases, plus --

7 MR. ROBERTSON: Let me be candid with the
8 Court.

9 THE COURT: What is it?

10 MR. McDONALD: Akamai.

11 THE COURT: Akamai?

12 MR. ROBERTSON: Akamai is how it's
13 pronounced.

14 THE COURT: I can't pronounce it. All right.
15 I want you to give her the cites, so I make sure I've
16 read those while I'm working on the instructions.

17 MR. ROBERTSON: The Supreme Court has granted
18 a writ of certiorari with respect to this SAB case I
19 just referenced. But the Federal Circuit just came
20 down with a case I think in the last week that said
21 that the pendency of a writ of certiorari has no
22 impact whatsoever on what the state of the law is.

23 THE COURT: Why did the Federal Circuit feel
24 compelled to decide that? I think that's been the law
25 forever.

1489

1 MR. ROBERTSON: I think it was because one of
2 the litigants made the argument.

3 THE COURT: I understood that to be the case
4 for as long as I've been practicing law.

5 MR. ROBERTSON: All right. Thank you, Your
6 Honor.

7 THE COURT: All right. Thank you all very
8 much. Give the citations to her tonight so she can
9 print those out for me. Give her the books and we'll
10 be ready to go.

11 Thank you very much.

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13 (The proceedings were adjourned at 5:34 p.m.)

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<p>1490</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 13, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>1492</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. Thank you. 11 MR. McDONALD: Yes, Your Honor. Thank you. 12 THE COURT: Do you need to see me about something 13 before the jury comes in? 14 MR. ROBERTSON: Yes, Your Honor. You had asked us to 15 take a look at those appendices with respect to our motion on 16 this implementation on a customer-by-customer basis. 17 THE COURT: Yeah. 18 MR. ROBERTSON: We have done that, and the reason I 19 raised it, Your Honor, is one of the witnesses that's going to 20 be called this morning is Ms. Hannah Raleigh. You may recall 21 she testified once already. She is involved with Lawson 22 Professional Services that has to do -- that has responsibility 23 for implementation of the Lawson software products, and we're 24 concerned that she's going to be getting into areas in and 25 presenting testimony that Lawson is going to contend are</p>
<p>1491</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1493</p> <p>1 defenses to infringement later that are directly implicated by 2 that interrogatory number 24. 3 What I have provided Your Honor with is the 4 appendices that were referenced in the answers to the 5 interrogatories, the transcript from the March 26th hearing, 6 telephonic hearing on the motion to compel, and the relevant 7 citations to the transcript where this issue came up, and I do 8 want to continue to press the motion, Your Honor. 9 We do think that the answers, even with the 10 appendices, were nowhere near what was called for and what Your 11 Honor directed Lawson to do in response to that. 12 If I might just, Your Honor, you may recall that 13 these appendices that are being referenced were provided to 14 ePlus three months before the motion to compel was presented, 15 and the appendices do not respond to the interrogatory as 16 represented by counsel for Lawson. 17 Indeed, if you look at some of the appendices, for 18 example -- 19 THE COURT: Is A appendix A? 20 MR. ROBERTSON: Yes, sir. Under the tab December 23, 21 2009, response to interrogatory number -- yeah, A is one. 22 THE COURT: March 26th is the first tab, the 23 transcript, and then there's an A behind that. Is that 24 appendix A or not? 25 MR. ROBERTSON: I believe appendix A, Your Honor, is</p>

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<p>1506</p> <p>1 should I try this, should I not try this, I'm having some</p> <p>2 issues here, can you help us out, and we'll take a look at</p> <p>3 that. Those are always phone calls or site visits, sometimes</p> <p>4 they come up and see us.</p> <p>5 Q I'm going to ask you a couple of questions about Lawson</p> <p>6 generally.</p> <p>7 A Sure.</p> <p>8 Q What kinds of products does Lawson sell?</p> <p>9 A Software and then services to help service that software</p> <p>10 and then clearly the maintenance.</p> <p>11 Q Does Lawson sell computer systems?</p> <p>12 A No, it does not.</p> <p>13 Q Does Lawson sell any kind of computer hardware?</p> <p>14 A No, it does not.</p> <p>15 Q I'm going to ask you a few questions about Lawson system</p> <p>16 foundation.</p> <p>17 A Sure.</p> <p>18 Q At a high level, what is LSF?</p> <p>19 A Lawson system foundation, it is a basis for the 4GL,</p> <p>20 Lawson 4GL applications such as purchase order, requisitions or</p> <p>21 RQ, and inventory control. They need that in order to operate,</p> <p>22 but not only do they need it to operate it, they need it in</p> <p>23 order to actually be compiled.</p> <p>24 The programming language by itself my developers actually</p> <p>25 work in is an extension of COBOL but doesn't always necessarily</p>	<p>1508</p> <p>1 THE COURT: Okay, done. Now we don't need to talk</p> <p>2 about anything else. Stay with the accused products.</p> <p>3 Q I'm going to ask you, or I'm going to turn now to the item</p> <p>4 master database --</p> <p>5 A Sure.</p> <p>6 Q -- and ask you some questions about that.</p> <p>7 A Uh-huh.</p> <p>8 Q When Lawson sells its software to its customers, is there</p> <p>9 any item data in the item master database?</p> <p>10 A No, there's not.</p> <p>11 Q Why does Lawson sell it that way, with no item data in it?</p> <p>12 A Essentially we don't know what the customers are going to</p> <p>13 want to have in the database. It's configurable in a variety</p> <p>14 of ways.</p> <p>15 THE COURT: Essentially, you don't know; that's the</p> <p>16 answer. Keep the question and the answer -- and the best way</p> <p>17 to keep an examination moving is for you to take control of the</p> <p>18 questions and not be -- we don't need a general dissertation of</p> <p>19 things. We need to have the questions asked and answered.</p> <p>20 Q Would item master work if it included only items from a</p> <p>21 single vendor?</p> <p>22 A Yes.</p> <p>23 Q Would item master work if it included only items that were</p> <p>24 already owned by the customer?</p> <p>25 A Yes.</p>
<p>1507</p> <p>1 look like COBOL. The program files, when you look at it, is</p> <p>2 completely dispersed through a variety of things, and LSF pulls</p> <p>3 it all together into an actual COBOL program. We don't</p> <p>4 actually see that. That's a machine that does that.</p> <p>5 Q Other than -- are Lawson software modules other than the</p> <p>6 accused products in this case also hosted on top of LSF?</p> <p>7 A That is correct.</p> <p>8 Q Can you give me a few examples of modules that are hosted</p> <p>9 on LSF other than the accused products in this case?</p> <p>10 A When I talked about the financial suite and the HR suite</p> <p>11 --</p> <p>12 THE COURT: Why are we getting into this? It's hard</p> <p>13 enough to follow this technical material without getting into</p> <p>14 something that isn't an issue. Let's just stay with what's at</p> <p>15 issue and get right to the point, okay? That doesn't make any</p> <p>16 difference what else is hosted.</p> <p>17 MS. STOLL-DeBELL: Well, I think it goes to the fact</p> <p>18 that LSF -- what are the accused products and that LSF works</p> <p>19 with things other than that.</p> <p>20 MR. ROBERTSON: I'll stipulate that LSF works with</p> <p>21 the other products as long as you stipulate it works with the</p> <p>22 accused products.</p> <p>23 MS. STOLL-DeBELL: I think we do.</p> <p>24 THE COURT: Do you or not?</p> <p>25 MS. STOLL-DeBELL: We do.</p>	<p>1509</p> <p>1 Q Can item master be stored in a local database at the</p> <p>2 customer's location?</p> <p>3 A Yes, it may.</p> <p>4 Q Can item master include item records for items owned by</p> <p>5 the customer?</p> <p>6 A Yes.</p> <p>7 Q Can item master records include a customer's part number?</p> <p>8 A Yes, it can.</p> <p>9 Q Can item master records include the manufacturer or</p> <p>10 supplier's catalog or part number?</p> <p>11 A Yes.</p> <p>12 Q Do item master records include a default unit of measure?</p> <p>13 A Yes, it does.</p> <p>14 Q Do item master records include an item description?</p> <p>15 A Yes, it does.</p> <p>16 Q Do item master records include the quantity of items</p> <p>17 available in the customer-owned inventory?</p> <p>18 A For stock items, yes.</p> <p>19 Q Do item master records include price?</p> <p>20 A Yes.</p> <p>21 MS. STOLL-DeBELL: If we can go to PX-361.</p> <p>22 MR. ROBERTSON: Your Honor, I'm going to object.</p> <p>23 This is a demonstrative that Dr. Weaver did that was never</p> <p>24 introduced. This witness -- so it's not in evidence.</p> <p>25 THE COURT: Could I see it?</p>

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<p>1526</p> <p>1 There's many other fields that are in the item master.</p> <p>2 We've talked about some of them. You know, catalog number, the</p> <p>3 vendor's part number or its number, the manufacturer number,</p> <p>4 clearly those came from the -- the manufacturer came from the</p> <p>5 manufacturer, and the vendor number came from the vendor, and</p> <p>6 those were in their catalogs at some point in time. The</p> <p>7 description generally --</p> <p>8 THE COURT: Those did come from a vendor?</p> <p>9 THE WITNESS: What did come from --</p> <p>10 THE COURT: Those that you just testified to --</p> <p>11 THE WITNESS: Did come from the vender, but --</p> <p>12 THE COURT: So they were published by a vendor?</p> <p>13 THE WITNESS: Those particular items, right.</p> <p>14 THE COURT: Thank you.</p> <p>15 THE WITNESS: Where I was differentiating, she was</p> <p>16 saying the item master, that, in itself, all the fields were</p> <p>17 not, and that's why I was really struggling with the yes or no,</p> <p>18 Your Honor.</p> <p>19 THE COURT: I know, but the jury have a right to</p> <p>20 understand what people's opinions are before they start talking</p> <p>21 about them.</p> <p>22 THE WITNESS: I appreciate that.</p> <p>23 THE COURT: Then they understand what they're being</p> <p>24 told.</p> <p>25 Q Do a lot of fields come from the customer in item master?</p>	<p>1528</p> <p>1 Q Do Lawson's customers maintain the item master database in</p> <p>2 private?</p> <p>3 A Yes.</p> <p>4 MR. ROBERTSON: Objection, relevancy, Your Honor.</p> <p>5 MS. STOLL-DeBELL: Your Honor, it goes to --</p> <p>6 THE COURT: What does that have to do with anything?</p> <p>7 MS. STOLL-DeBELL: I think it goes to whether it's</p> <p>8 published by a vendor, whether it meets your definition --</p> <p>9 THE COURT: No, I don't think so. Objection</p> <p>10 sustained. Disregard the answer, please.</p> <p>11 MS. STOLL-DeBELL: Can we go to, Bill, PX-363, and</p> <p>12 I'm going to want to see page that ends in 942297.</p> <p>13 MR. ROBERTSON: I'm sorry, Ms. Stoll-DeBell, what</p> <p>14 page?</p> <p>15 THE COURT: What exhibit are we on?</p> <p>16 THE CLERK: 363.</p> <p>17 MS. STOLL-DeBELL: Actually I need to get you a</p> <p>18 better page.</p> <p>19 Q Let's go to the page ending in 942297.</p> <p>20 THE COURT: 297, the last three digits?</p> <p>21 MS. STOLL-DeBELL: Yes.</p> <p>22 Q What is this, Mr. Christopherson?</p> <p>23 A That is the login screen to get into the Lawson system</p> <p>24 requiring a user name and a password.</p> <p>25 Q So when a customer or when anyone wants to use Lawson</p>
<p>1527</p> <p>1 A Most of the fields.</p> <p>2 MR. ROBERTSON: Object to the form of the question;</p> <p>3 vague, ambiguous as to a lot of fields.</p> <p>4 Q Do most of the fields in item master come from the</p> <p>5 customer?</p> <p>6 MR. ROBERTSON: Same objection, Your Honor. I mean,</p> <p>7 if we want to be specific, there's hundred of fields.</p> <p>8 Q Mr. Christopherson, are there hundreds of fields in item</p> <p>9 master?</p> <p>10 A No, there's not.</p> <p>11 Q How many fields are in item master?</p> <p>12 A I don't recall, but there's under 100.</p> <p>13 THE COURT: So there are a lot, I mean between 0 and</p> <p>14 100?</p> <p>15 THE WITNESS: Yes, Your Honor.</p> <p>16 THE COURT: Is it closer to a hundred than it is to</p> <p>17 zero, or close to zero than it is to a hundred?</p> <p>18 THE WITNESS: It's probably pretty close to 50</p> <p>19 roughly.</p> <p>20 THE COURT: So there are 50. You can handle that on</p> <p>21 cross-examination, Mr. Robertson. Overruled.</p> <p>22 MR. ROBERTSON: Thank you, Your Honor.</p> <p>23 Q Would you say a majority of those 50 come from the</p> <p>24 customer?</p> <p>25 A I would say from the customer it is clearly a majority.</p>	<p>1529</p> <p>1 software, do they need to have a user name and password?</p> <p>2 MR. ROBERTSON: Objection, Your Honor, relevancy.</p> <p>3 MS. STOLL-DeBELL: It goes to his opinion, support</p> <p>4 for his opinion as to whether item master is -- meets the</p> <p>5 definition of catalog as defined --</p> <p>6 THE COURT: I don't understand why, the fact that</p> <p>7 somebody needs a password to get in and use it.</p> <p>8 MS. STOLL-DeBELL: I think it goes to whether item</p> <p>9 master is made generally known or not.</p> <p>10 THE COURT: The issue is not whether item master is</p> <p>11 made generally known. It's whether the things that are listed</p> <p>12 in item master are made generally known, isn't it?</p> <p>13 MS. STOLL-DeBELL: Well, I think --</p> <p>14 THE COURT: The issue is what's in the item master,</p> <p>15 not whether item master is made generally known as I understand</p> <p>16 the way you all have tried the case, so objection sustained.</p> <p>17 Q For a user to gain access to see what information is in</p> <p>18 item master, do they need to use login credentials as shown on</p> <p>19 this screen?</p> <p>20 MR. ROBERTSON: Same objection, Your Honor.</p> <p>21 THE COURT: It may be admissible for a different</p> <p>22 purpose. Besides that, Dr. Weaver has already testified about</p> <p>23 putting in the user name that says Lawson, and then he said, we</p> <p>24 put in our password. So it may be appropriate, but it's not</p> <p>25 appropriate for -- the previous question wasn't. All right,</p>

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<p style="text-align: right;">1554</p> <p>CHRISTOPHERSON - DIRECT 1554</p> <p>1 That's not a proper relevant line of questioning.</p> <p>2 MS. STOLL-DeBELL: I'm asking him to comment</p> <p>3 on how the software works.</p> <p>4 THE COURT: Your asking him to comment on</p> <p>5 what another witness did. So what's the difference</p> <p>6 between asking him -- can I ask another witness does</p> <p>7 he believe the other witness was telling the truth? I</p> <p>8 can't ask that, can I?</p> <p>9 MS. STOLL-DeBELL: No.</p> <p>10 THE COURT: If you're testifying, I can't ask</p> <p>11 you do you believe that witness A was telling the</p> <p>12 truth, can I?</p> <p>13 MS. STOLL-DeBELL: No, but I think this is</p> <p>14 different because we're talking about Lawson's accused</p> <p>15 software in this case. And Mr. Christopherson does</p> <p>16 know how that software works. He's worked with it for</p> <p>17 nine years. So I'm asking him about that.</p> <p>18 THE COURT: No, you're asking him about what</p> <p>19 somebody else did.</p> <p>20 MS. STOLL-DeBELL: Your Honor, I'm asking him</p> <p>21 about what he saw Dr. Weaver do with the software he</p> <p>22 works with.</p> <p>23 THE COURT: I know. Your asking him to</p> <p>24 comment on Dr. Weaver's testimony, right?</p> <p>25 MS. STOLL-DeBELL: What he saw the software</p>	<p style="text-align: right;">1556</p> <p>CHRISTOPHERSON - DIRECT 1556</p> <p>1 categorize similar products to be used for different</p> <p>2 kinds of analysis?</p> <p>3 A Yes.</p> <p>4 Q Do they help companies analyze spending patterns?</p> <p>5 A Yes.</p> <p>6 Q Do UNSPSC codes identify generally equivalent</p> <p>7 items?</p> <p>8 MR. ROBERTSON: Objection, Your Honor. I</p> <p>9 think that calls for an opinion, and it also intrudes</p> <p>10 on an opinion with respect to infringement issues. So</p> <p>11 it calls for a legal conclusion.</p> <p>12 THE COURT: It calls for expert opinion, did</p> <p>13 you say, or legal conclusion or what?</p> <p>14 MR. ROBERTSON: It calls for an expert</p> <p>15 opinion.</p> <p>16 THE COURT: Your voice dropped off right</p> <p>17 there at the end and I didn't hear it.</p> <p>18 MR. ROBERTSON: I apologize, Your Honor.</p> <p>19 Yes, it's seeking a legal opinion from this witness</p> <p>20 and it calls for a legal conclusion in this case.</p> <p>21 THE COURT: A legal opinion? Why is it a</p> <p>22 legal opinion?</p> <p>23 MR. ROBERTSON: Excuse me. I misspoke. It</p> <p>24 calls for an expert opinion, Your Honor, and it seeks</p> <p>25 a legal conclusion.</p>
<p style="text-align: right;">1555</p> <p>CHRISTOPHERSON - DIRECT 1555</p> <p>1 do. What he saw Dr. Weaver do with the software in</p> <p>2 this case.</p> <p>3 THE COURT: Objection sustained. Please</p> <p>4 disregard the answer. One witness can't comment upon</p> <p>5 what another witness has testified to in that fashion.</p> <p>6 BY MS. STOLL-DeBELL:</p> <p>7 Q I'm going to ask you some questions about UNSPSC</p> <p>8 codes. Okay?</p> <p>9 A Okay.</p> <p>10 Q Are UNSPSC codes used to categorize similar</p> <p>11 products for use with different kinds of analysis?</p> <p>12 MR. ROBERTSON: Objection. Lack of</p> <p>13 foundation.</p> <p>14 MS. STOLL-DeBELL: I can lay a foundation.</p> <p>15 THE COURT: All right.</p> <p>16 BY MS. STOLL-DeBELL:</p> <p>17 Q Do you know what UNSPSC codes are?</p> <p>18 A Yes.</p> <p>19 Q Do you work with them as part of your work for</p> <p>20 Lawson software?</p> <p>21 A Yes.</p> <p>22 Q Does Lawson Software have the capability of using</p> <p>23 UNSPSC codes?</p> <p>24 A Yes.</p> <p>25 Q Are UNSPSC codes used in Lawson Software to</p>	<p style="text-align: right;">1557</p> <p>CHRISTOPHERSON - DIRECT 1557</p> <p>1 THE COURT: All right. And the question was?</p> <p>2 MS. STOLL-DeBELL: The question was, Do</p> <p>3 UNSPSC codes identify generally equivalent items. I</p> <p>4 don't think it calls for an expert opinion. I'm just</p> <p>5 asking him a fact about whether these codes categorize</p> <p>6 generally equivalent items. It's not an expert</p> <p>7 opinion.</p> <p>8 THE COURT: It's a lay opinion. So you're</p> <p>9 asking him whether in his opinion that's what they do?</p> <p>10 MS. STOLL-DeBELL: Yes.</p> <p>11 THE COURT: Why is his opinion relevant?</p> <p>12 MS. STOLL-DeBELL: Because he works with the</p> <p>13 software. The software uses these codes. And so he</p> <p>14 can talk about what the codes do.</p> <p>15 THE COURT: You can ask him his opinion as a</p> <p>16 lay person what it does. It's up to the jury to</p> <p>17 decide what weight to give to the opinion.</p> <p>18 MS. STOLL-DeBELL: Okay.</p> <p>19 BY MS. STOLL-DeBELL:</p> <p>20 Q Do you understand or do you want me to ask it</p> <p>21 again?</p> <p>22 A Will you ask the question again? I think it's a</p> <p>23 yes or no.</p> <p>24 Q Okay. It might be. In your lay opinion, do</p> <p>25 UNSPSC codes identify generally equivalent items?</p>

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<p style="text-align: right;">1558</p> <p>CHRISTOPHERSON - DIRECT 1558</p> <p>1 A No.</p> <p>2 Q Why not?</p> <p>3 A They are structured in a way that it's much like a</p> <p>4 grocery store, if you would. It kind of identifies</p> <p>5 the aisle that you first are headed down. You're</p> <p>6 heading down perhaps the produce aisle. And that's at</p> <p>7 the top level, maybe even the first two digits or the</p> <p>8 first four digits, and as your get further down, let's</p> <p>9 take produce, for example. Maybe you're over in the</p> <p>10 vegetable area and eventually you end up with the</p> <p>11 tomatoes.</p> <p>12 When you get down to the fourth level, the</p> <p>13 tomatoes, maybe they are the same. Maybe they are not</p> <p>14 equivalent, the same. But there's other examples of</p> <p>15 codes.</p> <p>16 THE COURT: You mean it identifies Roma</p> <p>17 tomatoes and Hanover tomatoes and Fairfield tomatoes,</p> <p>18 and they are not generally equivalent; is that what</p> <p>19 you're saying?</p> <p>20 THE WITNESS: They may not be, Your Honor.</p> <p>21 THE COURT: Okay.</p> <p>22 BY MS. STOLL-DeBELL:</p> <p>23 Q Mr. Christopherson, do you have an example of a</p> <p>24 UNSPSC code that we can show the jury to put this in</p> <p>25 some context?</p>	<p style="text-align: right;">1560</p> <p>CHRISTOPHERSON - DIRECT 1560</p> <p>1 lay opinion, otherwise he's getting into expert</p> <p>2 opinion. So let's just go ahead and do something</p> <p>3 else. He wasn't identified as an expert. He hasn't</p> <p>4 done a report on those codes. So let's go.</p> <p>5 BY MS. STOLL-DeBELL:</p> <p>6 Q Okay. I'm going to ask you some questions about</p> <p>7 Punchout.</p> <p>8 A Okay.</p> <p>9 Q And I'm going to ask that you put up PX 101.</p> <p>10 Actually, can you go to page ending in 1265. What is</p> <p>11 this? What does this show?</p> <p>12 A This shows RSS running and they have selected the</p> <p>13 Punchout options.</p> <p>14 THE COURT: I think the more basic question</p> <p>15 is: What's the whole exhibit? Is this something that</p> <p>16 Lawson produced?</p> <p>17 MS. STOLL-DeBELL: Yes.</p> <p>18 THE COURT: Mr. Christopherson, is this a</p> <p>19 document Lawson generated?</p> <p>20 THE WITNESS: It's actually a joint one</p> <p>21 between Mr. Lohkamp and then also one of our</p> <p>22 customers. A power point.</p> <p>23 THE COURT: A presentation?</p> <p>24 THE WITNESS: Yes.</p> <p>25 THE COURT: In that presentation on that page</p>
<p style="text-align: right;">1559</p> <p>CHRISTOPHERSON - DIRECT 1559</p> <p>1 A Yes, I do.</p> <p>2 MS. STOLL-DeBELL: Bill, can you pull up</p> <p>3 Plaintiff's Exhibit 32. And can you go to page ending</p> <p>4 in 0105.</p> <p>5 THE COURT: Now you are getting him to give</p> <p>6 expert testimony on UNSPSC codes. You're asking him a</p> <p>7 lot of other questions about it other than what was</p> <p>8 the basis for his opinion.</p> <p>9 This is what I think. I don't think it does</p> <p>10 generally equivalent because he thinks tomatoes aren't</p> <p>11 the same. That's his business. That's his opinion.</p> <p>12 But now you're moving into another area, and I think</p> <p>13 this is what Mr. Robertson's objection may have been</p> <p>14 to. And if that's what it is --</p> <p>15 MS. STOLL-DeBELL: We don't know if there's a</p> <p>16 UNSPSC for tomatoes. I have no idea if there is, if</p> <p>17 that's what the level is.</p> <p>18 THE COURT: He knows that.</p> <p>19 MS. STOLL-DeBELL: So I'm asking him, this is</p> <p>20 just a list of codes, actual codes, and what they are.</p> <p>21 I'm just going to pull it up and ask him to answer the</p> <p>22 question in the context of a real code with a real</p> <p>23 description as opposed to tomatoes.</p> <p>24 THE COURT: I think we've gone as far as we</p> <p>25 need to go. He's given the basis for his opinion, his</p>	<p style="text-align: right;">1561</p> <p>CHRISTOPHERSON - DIRECT 1561</p> <p>1 what's going on?</p> <p>2 THE WITNESS: On that particular one, they</p> <p>3 are showing a Punchout running or they are starting</p> <p>4 the Punchout application inside of the RSS.</p> <p>5 BY MS. STOLL-DeBELL:</p> <p>6 Q So in this screen shot here, we're looking at</p> <p>7 Lawson Software actually running this page; is that</p> <p>8 correct?</p> <p>9 A Can we highlight the top because it's a bit fuzzy?</p> <p>10 I would actually like to see the URL.</p> <p>11 Based on that, that's actually the -- the key is</p> <p>12 you get the Trinity Health Organization. So that</p> <p>13 would be actually the customer's website that the</p> <p>14 screen shot is taken from.</p> <p>15 Q Okay. Is the screen shot of Lawson's RSS</p> <p>16 software?</p> <p>17 A Yes.</p> <p>18 Q Is it showing the Punchout icons that you can</p> <p>19 select as part of Lawson's Punchout product?</p> <p>20 A At that particular customer site, yes.</p> <p>21 THE COURT: At what did you say?</p> <p>22 THE WITNESS: At that customer site, yes.</p> <p>23 THE COURT: Okay.</p> <p>24 BY MS. STOLL-DeBELL:</p> <p>25 Q And then there's that red box that says select the</p>

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<p>1590</p> <p>1 Q Does that refresh your recollection that this new</p> <p>2 functionality was added with respect to 8.0.3 when</p> <p>3 this release note came out?</p> <p>4 A This reflects -- it does help refresh my memory</p> <p>5 about these particular release notes, yes.</p> <p>6 THE COURT: That wasn't the question. The</p> <p>7 question was: Does it refresh your recollection that</p> <p>8 the new functionality has been added to electronically</p> <p>9 load a vendor file which contains vendor item, unit of</p> <p>10 measure, and unit of price information into the</p> <p>11 purchase order application? Does it refresh your</p> <p>12 recollection on that point?</p> <p>13 THE WITNESS: Yes, it does.</p> <p>14 THE COURT: All right. And did it?</p> <p>15 THE WITNESS: Did it do what?</p> <p>16 THE COURT: Did it do what it said in that</p> <p>17 first sentence that you've been talking about?</p> <p>18 THE WITNESS: Yes, it did, Your Honor.</p> <p>19 THE COURT: All right. Let's go.</p> <p>20 BY MR. ROBERTSON:</p> <p>21 Q The next bullet point says, Item 3 identifies how</p> <p>22 a Lawson item number should be created when adding the</p> <p>23 catalog item to the item master. Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Those are the terms you used, the catalog item,</p>	<p>1592</p> <p>1 A That's correct.</p> <p>2 Q And you would agree with me that that item catalog</p> <p>3 information disclosed by the vendor or the supplier</p> <p>4 through a vendor agreement import process ends up in</p> <p>5 the item master, correct?</p> <p>6 A Say that again.</p> <p>7 Q Yes. The vendor or the supplier who provides this</p> <p>8 item catalog information to the customer can be</p> <p>9 imported through this process we're talking about</p> <p>10 here, this vendor agreement import, into the item</p> <p>11 master?</p> <p>12 MS. STOLL-DeBELL: Objection to form of the</p> <p>13 question. It's unclear.</p> <p>14 MR. ROBERTSON: I'll rephrase, Your Honor.</p> <p>15 THE COURT: All right.</p> <p>16 MS. STOLL-DeBELL: I think he talked about a</p> <p>17 supplier being loaded in.</p> <p>18 MR. ROBERTSON: I'll rephrase the question.</p> <p>19 BY MR. ROBERTSON:</p> <p>20 Q The vendor that has provided the catalog item</p> <p>21 information in a CSV format ends up through this</p> <p>22 process in the item master; isn't that right?</p> <p>23 MS. STOLL-DeBELL: Objection. The vendor --</p> <p>24 the question is unclear.</p> <p>25 THE COURT: Are you asking whether the vendor</p>
<p>1591</p> <p>1 isn't that right, when you made this new release note</p> <p>2 for Version 8.0.3?</p> <p>3 A That's a term that was used by the technical</p> <p>4 writer.</p> <p>5 Q You're not trying to run away from "catalog," are</p> <p>6 you, sir?</p> <p>7 A No. You did ask me "did you use that term," and I</p> <p>8 did not use that term.</p> <p>9 Q I'm sorry. It was an indefinite pronoun. Did</p> <p>10 Lawson use "catalog item" when it did these release</p> <p>11 notes?</p> <p>12 A Yes, it did.</p> <p>13 Q On this import process?</p> <p>14 A Yes.</p> <p>15 Q It's the vendor that are provides the item catalog</p> <p>16 in a CSV format; is that right?</p> <p>17 A That's correct.</p> <p>18 Q The vendor discloses or makes known that item</p> <p>19 information in that CSV format, correct?</p> <p>20 A Discloses to whom?</p> <p>21 Q The customer.</p> <p>22 A To the customer, yes.</p> <p>23 Q And Lawson in this vendor import agreement process</p> <p>24 calls that vendor information "item catalog</p> <p>25 information," right?</p>	<p>1593</p> <p>1 ends up in the item master?</p> <p>2 MR. ROBERTSON: No.</p> <p>3 THE COURT: That's what her objection is and</p> <p>4 I think it's well taken.</p> <p>5 MR. ROBERTSON: Let me rephrase then.</p> <p>6 THE COURT: It's the item that ends up there,</p> <p>7 I think.</p> <p>8 BY MR. ROBERTSON:</p> <p>9 Q The vendor provides the item catalog information</p> <p>10 that ends up in the item master; isn't that right?</p> <p>11 A That is some of the information that ends up</p> <p>12 there.</p> <p>13 Q Why don't you take a look at this vendor import</p> <p>14 price agreement again. Let me see if I can refresh</p> <p>15 your recollection on the process. If you would look</p> <p>16 at the page that ends 428.</p> <p>17 A Sorry about that. I was in the wrong document.</p> <p>18 Q That's all right. Take your time. Do you see</p> <p>19 that page is entitled, Vendor agreement import?</p> <p>20 A That's correct.</p> <p>21 Q And in the first box, it says, Vendor provides</p> <p>22 item catalog in CSV format. Do you see that?</p> <p>23 A That's correct.</p> <p>24 MS. STOLL-DeBELL: Your Honor, he hasn't</p> <p>25 asked him if this refreshes his recollection, and the</p>

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<p>1594</p> <p>1 witness has already testified that he hasn't seen this</p> <p>2 document before.</p> <p>3 MR. ROBERTSON: I was just about to ask that</p> <p>4 question since I just directed him to it.</p> <p>5 THE COURT: All he said is that's what it</p> <p>6 says.</p> <p>7 MS. STOLL-DeBELL: He should ask him that</p> <p>8 before he reads from the document and then ask the</p> <p>9 witness to testify.</p> <p>10 MR. ROBERTSON: I had to use the document to</p> <p>11 refresh the witness' recollection.</p> <p>12 THE COURT: Yes, you can. Objection to that</p> <p>13 part of the process is overruled.</p> <p>14 BY MR. ROBERTSON:</p> <p>15 Q So it says here --</p> <p>16 THE COURT: Just ask him.</p> <p>17 Q Does this refresh your recollection that the</p> <p>18 vendor provides item catalog in CSV format?</p> <p>19 A Yes.</p> <p>20 Q When you were talking about your ETL process, one</p> <p>21 of the things you talked about was an extraction. Do</p> <p>22 you recall that?</p> <p>23 A Correct.</p> <p>24 Q You said you could have a CD or a DVD and you even</p> <p>25 said a flat file, and that's when you identified the</p>	<p>1596</p> <p>1 database that is creating the item master and</p> <p>2 containing vendor item records, correct?</p> <p>3 A At a very high level, yes.</p> <p>4 Q And in this imported file, which is this comma</p> <p>5 separated value format, there are certain required</p> <p>6 fields, correct?</p> <p>7 A That's correct.</p> <p>8 Q One of the required fields is a vendor item</p> <p>9 number; isn't that right, sir?</p> <p>10 A Correct.</p> <p>11 Q And one of the required fields is a vendor item</p> <p>12 description, correct?</p> <p>13 A Correct.</p> <p>14 Q And one of the required fields is a unit of</p> <p>15 measure; isn't that right?</p> <p>16 A Correct.</p> <p>17 Q And one of the required fields is a unit price;</p> <p>18 isn't that right?</p> <p>19 A Correct.</p> <p>20 Q If you turn to the page that ends 431, there are a</p> <p>21 number of fields there. Are you comfortable now with</p> <p>22 this exhibit that it is describing the vendor import</p> <p>23 price agreements at a high level?</p> <p>24 A It appears to be, yes.</p> <p>25 MR. ROBERTSON: Your Honor, then I would move</p>
<p>1595</p> <p>1 term CSV, correct?</p> <p>2 A Yes.</p> <p>3 Q Can you tell the jury again what a CSV file is?</p> <p>4 A CSV is basically a comma separated values.</p> <p>5 THE COURT: C-o-m-m-a?</p> <p>6 THE WITNESS: Yes.</p> <p>7 Q And those values that are being separated is data</p> <p>8 with respect to the catalog item; isn't that right?</p> <p>9 A It starts out that way, yes.</p> <p>10 Q And that was disclosed or made known to the</p> <p>11 customer by the vendor, right?</p> <p>12 A Correct.</p> <p>13 Q And in this page that we're looking at here now,</p> <p>14 428, you'll see that there is a series of arrows</p> <p>15 pointing to other boxes, and at the very end there's a</p> <p>16 database, I believe.</p> <p>17 Would you agree with me that that's what's being</p> <p>18 characterized there?</p> <p>19 A Some sort of a data repository, yes.</p> <p>20 Q In there, it says, Create item master vendor item</p> <p>21 records, do you see that?</p> <p>22 A Correct.</p> <p>23 Q So this through this chart, Lawson is showing a</p> <p>24 customer how this vendor item catalog information that</p> <p>25 it disclosed or made generally known ends up in this</p>	<p>1597</p> <p>1 admission of this document.</p> <p>2 THE COURT: Any objection?</p> <p>3 MS. STOLL-DeBELL: No.</p> <p>4 THE COURT: All right. It's admitted as</p> <p>5 what?</p> <p>6 MR. ROBERTSON: I think it's Plaintiff's</p> <p>7 Exhibit No. 521.</p> <p>8 THE CLERK: 521?</p> <p>9 MR. ROBERTSON: Yes, sir.</p> <p>10 (Plaintiff's Exhibit No. 521 is admitted into</p> <p>11 evidence.)</p> <p>12 BY MR. ROBERTSON:</p> <p>13 Q If you will turn to the page -- actually, why</p> <p>14 don't we, now that it's admitted, let's go back and</p> <p>15 take a look at that page I was talking about, which</p> <p>16 ends with the Bates label 428.</p> <p>17 A Okay.</p> <p>18 Q So we've agreed that this item catalog information</p> <p>19 is disclosed or made known by a vendor. That's the</p> <p>20 first box. And I understood you to agree with me that</p> <p>21 this sort of barrel-shaped thing at the bottom, that's</p> <p>22 a database, correct?</p> <p>23 A Correct.</p> <p>24 Q So you go through phase 1 where the Lawson</p> <p>25 Software reads the CSV file from the vendor to create</p>

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<p>1598</p> <p>1 a vendor agreement, correct?</p> <p>2 A That's correct.</p> <p>3 Q And we go through this phase 2, mark or unmark a</p> <p>4 subset of vendor items for inclusion in the vendor</p> <p>5 agreement, right?</p> <p>6 A That's correct.</p> <p>7 Q If it's a new item, it goes over and it's</p> <p>8 indicated as yes to phase 3, import marked vendor</p> <p>9 items for inclusion on vendor agreement, correct?</p> <p>10 A That's correct.</p> <p>11 Q And then it ends up in the item master there where</p> <p>12 it says, Create item master vendor item records,</p> <p>13 right?</p> <p>14 A That's correct.</p> <p>15 Q Let's go to the page we talked about that has</p> <p>16 required fields which ends at 430.</p> <p>17 A Ends at 430?</p> <p>18 Q The Bates label that ends with 430, sir. Now,</p> <p>19 it's talking about what actually was imported in that</p> <p>20 file, right? I asked you about whether these were</p> <p>21 required fields.</p> <p>22 A It could. I've not seen this before, so give me a</p> <p>23 chance to look at it. You've obviously had that</p> <p>24 chance.</p> <p>25 Q That's fair.</p>	<p>1600</p> <p>1 information when it provided this catalog data,</p> <p>2 correct?</p> <p>3 A That's correct.</p> <p>4 Q The next one is UOM, do you see that, sir?</p> <p>5 A Correct. Yes, I do.</p> <p>6 Q That's the unit of measure, right?</p> <p>7 A That is, yes.</p> <p>8 Q That's one of the required things the vendor had</p> <p>9 to do, right?</p> <p>10 A Yes.</p> <p>11 Q The next one is the item cost. Do you see that?</p> <p>12 A Yes, I do.</p> <p>13 Q That's also one of those required things that the</p> <p>14 vendor had to make known or generally available to the</p> <p>15 customer in order for this to be loaded into the item</p> <p>16 master, correct?</p> <p>17 A Correct.</p> <p>18 Q The next one is a Lawson item number, okay? Do</p> <p>19 you see that?</p> <p>20 A Yes.</p> <p>21 Q So now Lawson can create its own item number for</p> <p>22 that, right?</p> <p>23 A Correct.</p> <p>24 Q But you can also have a field for a universal</p> <p>25 product code, correct?</p>
<p>1599</p> <p>1 A Yes. Okay.</p> <p>2 Q Just confirm for us that you agreed with me when I</p> <p>3 asked you whether all four of these things were</p> <p>4 required fields, correct?</p> <p>5 A Correct.</p> <p>6 Q If you turn to the next page, there's additional</p> <p>7 fields, isn't there?</p> <p>8 A That's correct.</p> <p>9 Q One of the fields in this importing vendor</p> <p>10 catalogs into the item master is, in No. 2, a vendor</p> <p>11 item description. Do you see that?</p> <p>12 A Correct.</p> <p>13 Q And it's described as the vendor's item</p> <p>14 description, right?</p> <p>15 A That is correct.</p> <p>16 Q That is who disclosed or made generally known that</p> <p>17 description, right?</p> <p>18 A That's correct.</p> <p>19 Q The next one is a vendor item number. Do you see</p> <p>20 that, number 3?</p> <p>21 A Uh-huh.</p> <p>22 Q It's the vendor identification code for the item;</p> <p>23 isn't that right?</p> <p>24 A That's correct.</p> <p>25 Q The vendor made generally known or disclosed that</p>	<p>1601</p> <p>1 A Correct.</p> <p>2 Q You can also have a field for stock-keeping units;</p> <p>3 isn't that right?</p> <p>4 A Correct.</p> <p>5 Q Go down to No. 12. Do you see there they have</p> <p>6 manufacturer item number?</p> <p>7 A Yes, I do.</p> <p>8 Q That's also information the vendor can provide</p> <p>9 that can then be imported into the item master,</p> <p>10 correct?</p> <p>11 A That's correct.</p> <p>12 Q And talked a little about these UNSPSC codes?</p> <p>13 A Correct.</p> <p>14 Q No. 16 talks about the -- actually, let me</p> <p>15 rephrase. You're familiar with that UNSPSC code,</p> <p>16 right?</p> <p>17 A Right.</p> <p>18 Q It's a hierarchy to drill down to try and identify</p> <p>19 products, correct?</p> <p>20 A Correct.</p> <p>21 Q And yesterday I asked you if that could be used in</p> <p>22 order for cross-referencing products, and I think you</p> <p>23 agreed with me. Do you mean that?</p> <p>24 A That was not yesterday. Two days ago, but yes.</p> <p>25 Q Okay. Sorry. They're starting to blur together.</p>

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<p>1 I appreciate that.</p> <p>2 It also has a field for the UNSPSC family. Do you</p> <p>3 see that?</p> <p>4 A Correct.</p> <p>5 Q Now, if you turn to the next page. There's a</p> <p>6 black box around those four required fields there. Do</p> <p>7 you see that?</p> <p>8 A Correct.</p> <p>9 Q So what's being emphasized here is this black box.</p> <p>10 These are the required fields, but all these other</p> <p>11 fields are available, right?</p> <p>12 A Fair. We don't understand the content, but that</p> <p>13 appears to be it, yes.</p> <p>14 Q But these are the fields that are available in</p> <p>15 this import process; isn't that right?</p> <p>16 A These are the fields that are available?</p> <p>17 Q That can be filled with catalog item data?</p> <p>18 A These are for the fields, yes.</p> <p>19 Q Why don't you turn to the next page.</p> <p>20 THE COURT: Wait a minute. Is everything</p> <p>21 listed on that page an available field?</p> <p>22 THE WITNESS: Correct.</p> <p>23 THE COURT: Including the four that are</p> <p>24 bracketed.</p> <p>25 THE WITNESS: Yes.</p>	<p>1602</p> <p>1 Q So alphanumeric means you can use the alphabet to</p> <p>2 describe something or identify it or you can use</p> <p>3 numbers, right?</p> <p>4 A Correct.</p> <p>5 Q You can use both?</p> <p>6 A Correct.</p> <p>7 Q There are at least five available user defined</p> <p>8 fields for that purpose isn't that right?</p> <p>9 A For alphanumeric, yes.</p> <p>10 Q One of the things I can put in that field, isn't</p> <p>11 it, sir, is the vendor name?</p> <p>12 A You could put the vendor name there, yes.</p> <p>13 Q If I put the vendor name in there, I come search</p> <p>14 in the Lawson system by vendor name; is that right?</p> <p>15 A You're searching for the alpha field.</p> <p>16 Q If I'm searching in that alpha field, and it has</p> <p>17 the vendor name, I could search by vendor name,</p> <p>18 correct?</p> <p>19 A You would get back those entries, yes.</p> <p>20 Q Those vendors?</p> <p>21 A Yes.</p> <p>22 Q That I put in that user defined field?</p> <p>23 A Correct.</p> <p>24 Q Could you just go to the page that ends with 437.</p> <p>25 That actually is identifying this vendor price</p> <p>1604</p>
<p>1603</p> <p>1 BY MR. ROBERTSON:</p> <p>2 Q I think you said earlier when we were talking</p> <p>3 about -- I think I made an objection as to what fields</p> <p>4 we were talking about.</p> <p>5 A Sure.</p> <p>6 Q And the Court asked the question: Are they</p> <p>7 between 0 and 100?</p> <p>8 A Right.</p> <p>9 Q These are the fields we're talking about, right?</p> <p>10 A Absolutely.</p> <p>11 Q Well, the next page that's now ending with 433</p> <p>12 also has a field that can be completed for UNSPSC</p> <p>13 class, right?</p> <p>14 A Correct.</p> <p>15 Q And then the next field that can be completed is</p> <p>16 for UNSPSC commodity, right?</p> <p>17 A That's correct.</p> <p>18 Q If you drop down a little bit, there's a number of</p> <p>19 user defined alpha fields. Do you see that? That's</p> <p>20 on 24 through 28 are user defined alpha fields,</p> <p>21 correct?</p> <p>22 A Uh-huh.</p> <p>23 Q If you look over, it says, This is a client</p> <p>24 defined alphanumeric field. Do you see that?</p> <p>25 A Yes, I do.</p>	<p>1605</p> <p>1 agreement import system as PO 536, which you indicated</p> <p>2 was the catalog load, right?</p> <p>3 A Correct.</p> <p>4 Q Why don't you go to the second to last page of</p> <p>5 what is now Plaintiff's Exhibit 521.</p> <p>6 A Bates number on that? 477?</p> <p>7 Q 477, yes, it is.</p> <p>8 A Okay.</p> <p>9 Q Do you see there's referenced at the bottom --</p> <p>10 actually, I'm sorry. Let me just start over and lay a</p> <p>11 better foundation. This is a screen shot; is that</p> <p>12 right?</p> <p>13 A Yes.</p> <p>14 Q And it's at a web address, an URL, of</p> <p>15 HTTP://support.lawson.com, correct?</p> <p>16 A That's correct.</p> <p>17 Q That's a Lawson website?</p> <p>18 A Yes.</p> <p>19 Q And we're looking here at a page on the Lawson</p> <p>20 website for customer support?</p> <p>21 A That's correct.</p> <p>22 Q And one of the things it says here under chapter</p> <p>23 6, Importing vendor price agreements, are you with me?</p> <p>24 A Importing -- okay. Got it. Yes. Chapter 6, yes,</p> <p>25 Importing vendor price agreements.</p>

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<p>1606</p> <p>1 Q And it states underneath there, "With more</p> <p>2 business being conducted electronically, you," and you</p> <p>3 understand you to be the customer, right?</p> <p>4 A Correct.</p> <p>5 Q "You may have a need to load vendor information in</p> <p>6 your Lawson application. The vendor agreement import</p> <p>7 process lets you automatically load vendor pricing</p> <p>8 information and create item master and purchase order</p> <p>9 vendor item records," do you see that?</p> <p>10 A Right.</p> <p>11 Q That's an accurate statement, correct?</p> <p>12 A That's correct.</p> <p>13 Q The heading below that says, Purchase order 8.0.3</p> <p>14 release notes. Do you recall we talked about those</p> <p>15 release notes earlier?</p> <p>16 A Yes.</p> <p>17 MR. ROBERTSON: Your Honor, I'd like to move</p> <p>18 those release notes as Plaintiff's Exhibit 522.</p> <p>19 THE COURT: Any objection?</p> <p>20 MS. STOLL-DeBELL: No, Your Honor.</p> <p>21 THE COURT: It's admitted.</p> <p>22 (Plaintiff's Exhibit No. 522 is admitted into</p> <p>23 evidence.)</p> <p>24 BY MR. ROBERTSON:</p> <p>25 Q It's states under that heading, Purchase order</p>	<p>1608</p> <p>1 file; isn't that right?</p> <p>2 A You do get a file, yes.</p> <p>3 Q It's a catalog file, isn't it, sir?</p> <p>4 A Correct, yes.</p> <p>5 Q All right. And that price catalog file can</p> <p>6 contain data such as the vendors item description,</p> <p>7 correct?</p> <p>8 A Correct.</p> <p>9 Q Vendor identifier?</p> <p>10 A Correct.</p> <p>11 Q The price?</p> <p>12 A Correct.</p> <p>13 Q The unit of measure?</p> <p>14 A Correct.</p> <p>15 Q And the vendor's catalog number, correct?</p> <p>16 A Correct.</p> <p>17 Q And the vendor can send the user the vendor price</p> <p>18 agreement import program, this vendor catalog we've</p> <p>19 been talking about, in a CSV file that contains a</p> <p>20 catalog of all the items the vendor can sell the user;</p> <p>21 isn't that right?</p> <p>22 A It could.</p> <p>23 Q Do you have any doubt about that?</p> <p>24 A I have no doubt that they can do it, yes.</p> <p>25 Q In fact, customers who have the EDI module that</p>
<p>1607</p> <p>1 release notes, 8.03, purchase order release notes 1,</p> <p>2 8.0.3, purchase order release notes. Let me focus on</p> <p>3 what I want to get here.</p> <p>4 This document contains release notes for the</p> <p>5 purchase order application for 8.0.3, 28.0.3, purchase</p> <p>6 order, purchase notes, purpose order release notes,</p> <p>7 vendor catalog load, correct?</p> <p>8 A Correct.</p> <p>9 Q Now, there's another way for the item master to</p> <p>10 get vendor catalog data into the -- excuse me.</p> <p>11 There's another procedure that Lawson employs to get</p> <p>12 catalog data into the item master, isn't there?</p> <p>13 A Correct.</p> <p>14 Q One of those processes is an EDI transaction;</p> <p>15 isn't that right?</p> <p>16 A You're talking about which transaction type?</p> <p>17 Q EDI 832?</p> <p>18 A Correct.</p> <p>19 Q So you know if a Lawson customer, for example, has</p> <p>20 that EDI Lawson module available to it as part of its</p> <p>21 procurement process, it can use that EDI 832</p> <p>22 transaction, right?</p> <p>23 A 832 transaction gets it to the front door, yes.</p> <p>24 Q And getting in through the front door in order to</p> <p>25 get into that item master, you can get a price catalog</p>	<p>1609</p> <p>1 you sell use that EDI 832 to import catalog data,</p> <p>2 don't they? You are familiar with that?</p> <p>3 A Yes, I am. Which catalog data are you referring</p> <p>4 to? The whole catalog?</p> <p>5 Q Well, it can be the whole catalog, can't it?</p> <p>6 A It could be the whole catalog.</p> <p>7 Q And it could be part of the catalog, right?</p> <p>8 A Correct.</p> <p>9 Q So it could be the entirety of the catalog or some</p> <p>10 subset of the catalog, right?</p> <p>11 A Right.</p> <p>12 Q The customer having this EDI 832 module has the</p> <p>13 capability of importing an entire vendor catalog into</p> <p>14 the item master, right?</p> <p>15 A It has that capability as you're defining it, yes.</p> <p>16 MS. STOLL-DeBELL: I'm going to object. It's</p> <p>17 outside the scope of direct.</p> <p>18 THE COURT: Overruled.</p> <p>19 MS. STOLL-DeBELL: Your Honor, I didn't even</p> <p>20 get into EDI at all.</p> <p>21 MR. ROBERTSON: She asked him about the</p> <p>22 manners and the way the data was imported.</p> <p>23 THE COURT: He testified as to three manners</p> <p>24 of getting data in, and now he's testifying to a</p> <p>25 fourth that you didn't ask him about, but the opening</p>

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<p>1610</p> <p>1 of the three opens the door to the fourth, and the</p> <p>2 fourth includes the EDI. So I think the questioning</p> <p>3 line is well taken.</p> <p>4 BY MR. ROBERTSON:</p> <p>5 Q All right, sir. In this EDI 832 process, you can</p> <p>6 also get catalog items that give, among other</p> <p>7 information, the cost of the item and the date on</p> <p>8 which that cost becomes effective, right?</p> <p>9 A Correct.</p> <p>10 Q An then the vendor price agreement import program</p> <p>11 can take that information and put it into the user's</p> <p>12 purchasing database, correct?</p> <p>13 A Correct.</p> <p>14 Q This 832 catalog sales catalog import, that</p> <p>15 transaction can be set up to provide for customary and</p> <p>16 established business and industry practice relative to</p> <p>17 furnishing or requesting the price of goods or</p> <p>18 services in the form of a catalog; isn't that right,</p> <p>19 sir?</p> <p>20 A That is one of the purposes of 832, yes.</p> <p>21 Q And that would also include the item</p> <p>22 identification?</p> <p>23 A Yes.</p> <p>24 Q And the product item description?</p> <p>25 A Yes.</p>	<p>1612</p> <p>1 THE COURT: They are not new exhibits because</p> <p>2 they haven't been admitted, and he erred in handing</p> <p>3 out the document before he asked the question.</p> <p>4 MR. ROBERTSON: I apologize, Your Honor.</p> <p>5 THE COURT: So turn the document over.</p> <p>6 Forget about the document, Mr. Christopherson. And</p> <p>7 he's going to ask you a question, and then we may go</p> <p>8 somewhere, but who knows.</p> <p>9 As my colleague Judge Williams says, let's</p> <p>10 abide that event. All right.</p> <p>11 BY MR. ROBERTSON:</p> <p>12 Q This EDI 832 price and sales catalog process for</p> <p>13 importing catalog data, that would provide us with</p> <p>14 item identification information and product and item</p> <p>15 description, right?</p> <p>16 A Correct.</p> <p>17 Q And I may have asked this already, but it also can</p> <p>18 provide you with a unit of measure?</p> <p>19 THE COURT: You asked him all those before.</p> <p>20 MR. ROBERTSON: I don't think I asked him</p> <p>21 with respect to EDI, but I asked him with respect to</p> <p>22 the other import process.</p> <p>23 Q You could have unit of measure through this EDI</p> <p>24 transaction process?</p> <p>25 A Right.</p>
<p>1611</p> <p>1 MR. ROBERTSON: Your Honor, I'd like to show</p> <p>2 the witness another document, if I could.</p> <p>3 Q This is a Lawson document; is that right, sir.</p> <p>4 A Yes.</p> <p>5 Q And you recognize this, sir?</p> <p>6 A I do not.</p> <p>7 MS. STOLL-DeBELL: Your Honor, I'm going to</p> <p>8 object. These are all Lawson documents. They were</p> <p>9 produced during discovery. They should have been on</p> <p>10 the exhibit list and --</p> <p>11 THE COURT: He can cross-examine from things</p> <p>12 that aren't on the exhibit list, but he can't get them</p> <p>13 into evidence unless you agree.</p> <p>14 MS. STOLL-DeBELL: Your Honor, I think he can</p> <p>15 use them for impeachment, but this isn't impeachment</p> <p>16 testimony. He's asking about documents that should</p> <p>17 have been on the exhibit list, and they're not.</p> <p>18 THE COURT: That doesn't have anything to do</p> <p>19 with whether it's impeachment or not. The correct way</p> <p>20 to do it is ask him a question first. Don't be</p> <p>21 getting the document in. Ask him the question. Then</p> <p>22 ask him an impeaching question if you've got one.</p> <p>23 BY MR. ROBERTSON:</p> <p>24 Q Would you agree --</p> <p>25 MS. STOLL-DeBELL: These are new exhibits.</p>	<p>1613</p> <p>1 Q And you could have the price, too?</p> <p>2 A Correct.</p> <p>3 Q All right. That's fine. That's all I have with</p> <p>4 respect to that.</p> <p>5 THE COURT: See, the document never came in.</p> <p>6 BY MR. ROBERTSON:</p> <p>7 Q Now, are you familiar with the PO 25 vendor</p> <p>8 catalog load changes?</p> <p>9 A No.</p> <p>10 Q Well, do you agree that the vendor catalog load</p> <p>11 process automatically loads item and vendor item</p> <p>12 information into the Lawson system?</p> <p>13 A Say that again.</p> <p>14 Q That the vendor catalog load process automatically</p> <p>15 loads item and vendor item information into the Lawson</p> <p>16 system? Do you agree or disagree with that statement?</p> <p>17 MS. STOLL-DeBELL: Your Honor, I object. I'm</p> <p>18 not sure what he's talking about. He just said he</p> <p>19 wasn't familiar with it. So I don't know if he's</p> <p>20 moved on.</p> <p>21 THE COURT: He said he wasn't familiar with</p> <p>22 something else, and then he changed the question and</p> <p>23 asked something else.</p> <p>24 MS. STOLL-DeBELL: Okay.</p> <p>25 BY MR. ROBERTSON:</p>

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<p>1630</p> <p>1 requisitioning and workflow approval leading to faster</p> <p>2 order cycle times, increased standardization and</p> <p>3 reduced costs, correct?</p> <p>4 A That is correct.</p> <p>5 Q That's one of the benefits of having this kind of</p> <p>6 procurement software over the old fashioned</p> <p>7 paper-based procurement process, right?</p> <p>8 A That's correct.</p> <p>9 Q Like every invention, you want it to be doing to</p> <p>10 do something fast, better cheaper?</p> <p>11 MS. STOLL-DeBELL: Objection, Your Honor.</p> <p>12 THE COURT: Sort of.</p> <p>13 MR. ROBERTSON: I'll withdraw the question,</p> <p>14 Your Honor.</p> <p>15 THE COURT: Yes, I think so.</p> <p>16 Q Turn to the next page, sir.</p> <p>17 A Sure.</p> <p>18 Q You see the representation there under Lawson</p> <p>19 Procurement Punchout? You can seamlessly browse from</p> <p>20 Lawson's requisition self service to vendor websites.</p> <p>21 Do you see that?</p> <p>22 A Yes.</p> <p>23 Q That's an accurate statement, right?</p> <p>24 A Yes.</p> <p>25 Q Seamlessly, right?</p>	<p>1632</p> <p>1 process flow. Do you see that?</p> <p>2 A I see it, yes.</p> <p>3 Q So this is saying how we're going to navigate</p> <p>4 through this process to build our shopping cart and</p> <p>5 then pull it back as a requisition and make purchase</p> <p>6 orders; isn't that right?</p> <p>7 A Give me a chance to review it.</p> <p>8 Q Sure.</p> <p>9 A Okay. At a very high level, yes.</p> <p>10 Q So at this high level, Lawson is representing that</p> <p>11 the first step is that Lawson requesters use this RSS</p> <p>12 screen to punch out to external vendors, correct?</p> <p>13 A That is correct.</p> <p>14 Q So then the Lawson requester is presented to the</p> <p>15 externals vendor's website to search and add items to</p> <p>16 the vendor's shopping cast. The shopping cart is</p> <p>17 being checked out and submitted, right?</p> <p>18 A That's correct.</p> <p>19 Q Then the shopping cart contents are returned back</p> <p>20 to Lawson RSS, right?</p> <p>21 A Right.</p> <p>22 Q Then the requester checks out their RSS shopping</p> <p>23 cart and requisition is sent for approval, right?</p> <p>24 A Correct.</p> <p>25 Q Once the requisition is approved, the purchase</p>
<p>1631</p> <p>1 A You have to define what seamlessly means.</p> <p>2 Q This is your document. Do you have an</p> <p>3 understanding of what "seamlessly" means?</p> <p>4 A It's not my document, sir.</p> <p>5 Q Well, it's a Lawson document. Lawson was</p> <p>6 representing that the process is seamless, right?</p> <p>7 A Well, we know --</p> <p>8 Q Lawson was representing that --</p> <p>9 THE COURT: You know, it would have just been</p> <p>10 sufficient to have left the question where it was</p> <p>11 because he already answered it was seamless and then</p> <p>12 you get into it.</p> <p>13 MR. ROBERTSON: I'll move on, Your Honor.</p> <p>14 BY MR. ROBERTSON:</p> <p>15 Q When the Lawson system punches out to the Punchout</p> <p>16 creating the partner's catalog, you remain connected</p> <p>17 to the Lawson system; is that right?</p> <p>18 A Say that again.</p> <p>19 Q Yes. When the Lawson system punches out to the</p> <p>20 Punchout creating the partner's catalog, you remain</p> <p>21 connected to the Lawson system, correct?</p> <p>22 A Correct.</p> <p>23 Q Let's take a look at the page that ends with Bates</p> <p>24 label 261, if we could.</p> <p>25 So here's the representation of this RSS Punchout</p>	<p>1633</p> <p>1 order, the PO there, is created by PO 100. That's</p> <p>2 accurate, right?</p> <p>3 A That's correct.</p> <p>4 Q Then the purchase order can be sent to the vendor</p> <p>5 using the Lawson EDI module, right?</p> <p>6 A It can be, yes.</p> <p>7 Q When the Lawson system was doing that, you</p> <p>8 remained connected to the Lawson system at all times;</p> <p>9 isn't that right, sir? Didn't you testify to that in</p> <p>10 your deposition?</p> <p>11 A It's connected, yes.</p> <p>12 Q You were asked about page 265, sir. If you could</p> <p>13 turn to that. Now, there's some questions about where</p> <p>14 the software was running on this in this Punchout</p> <p>15 demonstration. Let me just ask you, this was a joint</p> <p>16 presentation by Lawson and Trinity Information</p> <p>17 Systems, right?</p> <p>18 A Correct.</p> <p>19 Q So it's operating, as you can tell, I think you</p> <p>20 pointed to it, sir, the URL address is Trinity Health</p> <p>21 Organization, right?</p> <p>22 A That is correct.</p> <p>23 Q But after where it says TrinityHealth.org/, it</p> <p>24 says "Lawson/portal," right?</p> <p>25 A It does say that, yes.</p>

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<p>1702</p> <p>1 THE WITNESS: Yes, sir.</p> <p>2 Q When was the latest upgrade that Lawson provided to</p> <p>3 Novant?</p> <p>4 A The upgrade was to the 9.01 release.</p> <p>5 Q And when was that?</p> <p>6 A I think it was 2009.</p> <p>7 Q And Novant installed that upgrade?</p> <p>8 A Yes.</p> <p>9 Q We mentioned the UNSPSC codes before, the UNSPSC codes as</p> <p>10 you phrased them. Does Novant use the UNSPSC codes in its</p> <p>11 Lawson system?</p> <p>12 A We have them loaded in the data set up in the item master.</p> <p>13 Q In the item master using the Lawson system, does the</p> <p>14 UNSPSC code, does that enable a user to locate an equivalent</p> <p>15 item?</p> <p>16 MR. STRAPP: Objection, foundation.</p> <p>17 THE COURT: He can testify about what he thinks his</p> <p>18 does, but he can't testify about what all the rest of them do.</p> <p>19 MR. STRAPP: Your Honor, I also object that it calls</p> <p>20 for a legal conclusion as well.</p> <p>21 THE COURT: How?</p> <p>22 MR. STRAPP: It's asking for an expert opinion</p> <p>23 regarding a claim in the claim construction terms, term of</p> <p>24 equivalents.</p> <p>25 MR. SCHULTZ: There is no equivalents -- Your Honor,</p>	<p>1704</p> <p>1 THE COURT: Mr. Schultz, on this situation, let's</p> <p>2 move on. That's just sort of topical specific in their</p> <p>3 hospital because of their situation, and for good reason they</p> <p>4 don't want anybody but doctors and nurses telling them what's</p> <p>5 comparable or equivalent. That's what he's talking about, so</p> <p>6 that's not what we're dealing with this in this case. Let's go</p> <p>7 on.</p> <p>8 MR. SCHULTZ: Actually, Your Honor, that's all I've</p> <p>9 got.</p> <p>10 THE COURT: Okay.</p> <p>11 MR. SCHULTZ: Thank you, Mr. Yuhasz.</p> <p>12</p> <p>13 CROSS-EXAMINATION</p> <p>14 BY MR. STRAPP:</p> <p>15 Q Good afternoon, Mr. Yuhasz.</p> <p>16 A Afternoon.</p> <p>17 Q Could you please put Plaintiff's Exhibit 337 back on the</p> <p>18 screen for a minute, and page three of the exhibit. Now, we</p> <p>19 were -- you were discussing just recently this proposal from</p> <p>20 Lawson and SciQuest. I want to be perfectly clear here. This</p> <p>21 is just a proposal from Lawson and SciQuest; correct? This</p> <p>22 isn't the system as actually implemented at Novant; isn't that</p> <p>23 correct?</p> <p>24 A That's correct.</p> <p>25 Q And even in this depiction here, graphical proposal</p>
<p>1703</p> <p>1 that's not a claim term.</p> <p>2 THE COURT: You can ask him his understanding.</p> <p>3 MR. SCHULTZ: Yes.</p> <p>4 Q Mr. Yuhasz, your understanding with respect to the UNSPSC</p> <p>5 codes, does the Lawson system installed by Novant have the</p> <p>6 ability to locate an equivalent item?</p> <p>7 A No.</p> <p>8 Q Why not?</p> <p>9 A In more of a clinical setting, it is difficult to</p> <p>10 determine equivalent items. We would rely on a clinical</p> <p>11 specialist to tell us that, two different syringes from</p> <p>12 different manufacturers or even gauze or even hand sanitizer is</p> <p>13 an equivalent product.</p> <p>14 THE COURT: Wait a minute. Clinical, you mean</p> <p>15 doctors?</p> <p>16 THE WITNESS: Physicians, nurses, yes, sir.</p> <p>17 THE COURT: Medical people.</p> <p>18 THE WITNESS: Medical people.</p> <p>19 THE COURT: So you don't think it operates that way</p> <p>20 because you want the doctors and the nurses to be making that</p> <p>21 decision, not to have a computer make it.</p> <p>22 THE WITNESS: Yes.</p> <p>23 THE COURT: Okay, thank you.</p> <p>24 Q Do you have an example of a situation where the UNSPSC</p> <p>25 codes would not work for finding matching equivalent items?</p>	<p>1705</p> <p>Yuhasz - Cross</p> <p>1 representation, the item master, the item data, that's Lawson's</p> <p>2 in this depiction; correct?</p> <p>3 A That's correct.</p> <p>4 Q Let's talk about the products that are actually installed</p> <p>5 at Novant. Novant uses the Lawson inventory control module;</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q And Novant also uses the Lawson purchase order module;</p> <p>9 correct?</p> <p>10 A Yes.</p> <p>11 Q And Novant uses RSS or requisition self-service; is that</p> <p>12 correct?</p> <p>13 A Yes.</p> <p>14 Q And Novant has also licensed procurement punchout; is that</p> <p>15 correct?</p> <p>16 A Yes.</p> <p>17 Q Novant's been using Lawson requisition self-service for</p> <p>18 about five years; is that correct?</p> <p>19 A Yes.</p> <p>20 Q And prior to that, Lawson was using the requisitions</p> <p>21 module; is that correct?</p> <p>22 A Yes.</p> <p>23 Q Isn't it true that Lawson provided personnel to assist</p> <p>24 Novant with the initial implementation of requisition</p> <p>25 self-service?</p>

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<p style="text-align: right;">1706</p> <p>Yuhasz - Cross 1706</p> <p>1 A Yes.</p> <p>2 Q And that initial implementation took about four months;</p> <p>3 isn't that correct?</p> <p>4 A I think that was -- I couldn't put an exact date on just</p> <p>5 the requisition self-service because it is part of a larger</p> <p>6 project.</p> <p>7 Q That larger project took approximately four months; is</p> <p>8 that correct?</p> <p>9 A No, the larger project took more than that.</p> <p>10 Q How long did it take?</p> <p>11 A I'm not sure I can recollect at this moment.</p> <p>12 THE COURT: Don't guess. It's okay.</p> <p>13 Q Isn't it true that during that initial implementation,</p> <p>14 Lawson provided Novant with application consulting services?</p> <p>15 A Yes.</p> <p>16 Q And with technical consulting services?</p> <p>17 A Yes.</p> <p>18 Q And isn't it true that during that initial implementation</p> <p>19 of requisition self-service, Lawson also provided Novant with</p> <p>20 client site training?</p> <p>21 A For requisition self-service?</p> <p>22 Q Correct.</p> <p>23 A Yes.</p> <p>24 Q And Lawson personnel actually traveled to Novant to</p> <p>25 provide some classroom training on requisition self-service;</p>	<p style="text-align: right;">1708</p> <p>Yuhasz - Cross 1708</p> <p>1 A Yes.</p> <p>2 Q And those items also have part numbers sometimes; isn't</p> <p>3 that correct?</p> <p>4 A Yes.</p> <p>5 Q And items will have vendor or manufacturer numbers;</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q And items sometimes have images associated with them;</p> <p>9 correct?</p> <p>10 A Yes.</p> <p>11 Q Items have price information; is that right?</p> <p>12 A Yes.</p> <p>13 Q And items sometimes will have inventory availability;</p> <p>14 correct?</p> <p>15 A Yes.</p> <p>16 Q Now, isn't it true that the manufacturer or the vendor</p> <p>17 provides the contract price for the items in the item master?</p> <p>18 A Yes.</p> <p>19 Q And isn't it also true that the description of the items</p> <p>20 in the item master are provided by the manufacturer or vendor?</p> <p>21 A Not without transformation by Novant personnel.</p> <p>22 Q You get the descriptions of the goods from the</p> <p>23 manufacturers; right?</p> <p>24 A Yes.</p> <p>25 Q You understand UNSPSC to be a classification system for</p>
<p style="text-align: right;">1707</p> <p>Yuhasz - Cross 1707</p> <p>1 isn't that correct?</p> <p>2 A Yes.</p> <p>3 Q Novant has a maintenance agreement with Lawson for the</p> <p>4 requisition self-service software; isn't that correct?</p> <p>5 A Yes.</p> <p>6 Q And isn't it true that that maintenance agreement also</p> <p>7 allows Novant to receive ongoing upgrades to its software?</p> <p>8 A Yes.</p> <p>9 Q Lawson also provides Novant with an online library of</p> <p>10 educational materials regarding its procurement package?</p> <p>11 A Yes.</p> <p>12 Q Including specific product guides, for example?</p> <p>13 A Yes.</p> <p>14 Q Is it true that Novant currently has about 70,000 to</p> <p>15 80,000 active items in its item master database?</p> <p>16 A Yes.</p> <p>17 Q And those are all available for ordering through</p> <p>18 requisition self-service?</p> <p>19 A Yes.</p> <p>20 Q And isn't it correct that those 70,000 to 80,000 items are</p> <p>21 associated with approximately 10,000 different vendors; is that</p> <p>22 correct?</p> <p>23 A Yes. In rough numbers.</p> <p>24 Q And each of those items, those items have textual</p> <p>25 descriptions, correct, in the item master?</p>	<p style="text-align: right;">1709</p> <p>Yuhasz - Cross 1709</p> <p>1 particular items; correct? We've discussed that?</p> <p>2 A Yes.</p> <p>3 Q Isn't it true that Lawson requisition self-service, the</p> <p>4 application that's used at Novant, has the capability of using</p> <p>5 those UNSPSC codes?</p> <p>6 A Capability exists, not used.</p> <p>7 THE COURT: You say it exists but you don't use it?</p> <p>8 THE WITNESS: Yes, sir.</p> <p>9 Q Isn't it true that by searching for items using a UNSPSC</p> <p>10 code in Lawson requisition self-service, that if a user at</p> <p>11 Novant was to use that capability, it could find items from</p> <p>12 multiple vendors with a particular UNSPSC code?</p> <p>13 MR. SCHULTZ: Objection, foundation. He said he</p> <p>14 doesn't use it.</p> <p>15 MR. STRAPP: Your Honor, we've been talking about the</p> <p>16 capability of the Lawson system. The door was opened on</p> <p>17 direct.</p> <p>18 THE COURT: It's on cross-examination. I think he</p> <p>19 can answer that.</p> <p>20 A Could you repeat the question.</p> <p>21 Q Sure.</p> <p>22 THE COURT: If you did use it is the question. You</p> <p>23 may ask that.</p> <p>24 Q If a user at Novant was using Lawson requisition</p> <p>25 self-service searching for an item by using a UNSPSC code, that</p>

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<p style="text-align: right;">1710</p> <p>Yuhasz - Cross 1710</p> <p>1 user could find items from multiple vendors with the same</p> <p>2 UNSPSC code; isn't that correct?</p> <p>3 A Yes.</p> <p>4 Q You talked a little bit about a competition, an RFP</p> <p>5 process at Lawson; do you recall that testimony?</p> <p>6 A Yes.</p> <p>7 Q And the RFP that was sent was for procure to pay solution;</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 Q By a procure to pay solution, Novant means an end-to-end</p> <p>11 solution that starts all the way from requisitioning and goes</p> <p>12 through payment; correct?</p> <p>13 A Yes.</p> <p>14 Q The Novant Health -- the RPF, that was issued around 2008;</p> <p>15 is that correct?</p> <p>16 A Yes.</p> <p>17 Q And that RFP we saw was sent to Lawson; isn't that</p> <p>18 correct, Lawson and SciQuest?</p> <p>19 A Yes.</p> <p>20 Q It was also sent to ePlus?</p> <p>21 A Yes.</p> <p>22 Q Isn't it true that Novant sought the same functionality</p> <p>23 from ePlus that it sought from all the other vendors as part of</p> <p>24 this process including Lawson and SciQuest?</p> <p>25 A Yes.</p>	<p style="text-align: right;">1712</p> <p>1 MR. STRAPP: Yes, Your Honor.</p> <p>2 MR. SCHULTZ: Yes, Your Honor.</p> <p>3 THE COURT: Mr. Yuhasz, thank you for being here and</p> <p>4 giving us your testimony, and you are released from your</p> <p>5 obligation to be here. Thank you, sir.</p> <p>6 THE WITNESS: Thank you.</p> <p>7 THE COURT: Next witness?</p> <p>8 MS. STOLL-DeBELL: Your Honor, we're calling Mr.</p> <p>9 Keith Lohkamp back to the stand.</p> <p>10</p> <p>11 KEITH LOHKAMP,</p> <p>12 a witness, called by the defendant, having been first duly</p> <p>13 sworn, testified as follows:</p> <p>14 DIRECT EXAMINATION</p> <p>15 BY MS. STOLL-DeBELL:</p> <p>16 Q Mr. Lohkamp, do you have a college degree?</p> <p>17 A Yes, I do.</p> <p>18 Q When did you get your college degree?</p> <p>19 A In 1991.</p> <p>20 Q Where did you get it from?</p> <p>21 A Stanford University.</p> <p>22 Q And what kind of college degree did you get?</p> <p>23 A Bachelor's in international relations.</p> <p>24 Q Do you have an advanced degree?</p> <p>25 A Yes, I do.</p>
<p style="text-align: right;">1711</p> <p>1711</p> <p>1 MR. STRAPP: I have no further questions, Your Honor.</p> <p>2 THE COURT: Any redirect?</p> <p>3</p> <p>4 REDIRECT EXAMINATION</p> <p>5 BY MR. SCHULTZ:</p> <p>6 Q Mr. Yuhasz, Mr. Strapp just asked you about the RFP</p> <p>7 process. Did either ePlus or Lawson win that RFP process?</p> <p>8 A No.</p> <p>9 Q Who did?</p> <p>10 A Ariba.</p> <p>11 Q And why?</p> <p>12 MR. STRAPP: Objection, Your Honor, relevancy.</p> <p>13 THE COURT: What difference does it make who won it?</p> <p>14 MR. SCHULTZ: It goes to the functionality that was</p> <p>15 selected by Novant for fulfilling what they wanted out of their</p> <p>16 RFP process.</p> <p>17 MR. STRAPP: Your Honor, the functionality -- what</p> <p>18 Novant wanted is irrelevant. What matters here is the</p> <p>19 functionality that Lawson has in its accused system.</p> <p>20 THE COURT: It's marginally relevant, but it</p> <p>21 introduces delay and confusion and opens up a lot of other</p> <p>22 areas that we don't need to get into that really aren't</p> <p>23 relevant, so sustained.</p> <p>24 MR. SCHULTZ: Mr. Yuhasz, thank you for your time.</p> <p>25 THE COURT: Can Mr. Yuhasz be permanently excused?</p>	<p style="text-align: right;">1713</p> <p>Lohkamp - Direct 1713</p> <p>1 Q Will you describe that for me, please.</p> <p>2 A Yes, I have an MBA from the Haas School of Business at UC</p> <p>3 Berkeley.</p> <p>4 Q When did you get that?</p> <p>5 A I got that in 1996.</p> <p>6 Q When did you start working for Lawson?</p> <p>7 A May 2005.</p> <p>8 Q I think the other day you testified that you first learned</p> <p>9 about ePlus when you saw them at a trade show in 2003?</p> <p>10 A Yes, that's correct.</p> <p>11 Q Is that correct? But at that time, you were not working</p> <p>12 for Lawson; isn't that correct?</p> <p>13 A That's correct.</p> <p>14 Q And then I believe that you testified you didn't hear</p> <p>15 again of ePlus until 2008 in connection with a Cleveland Clinic</p> <p>16 bid; is that correct?</p> <p>17 MR. ROBERTSON: Your Honor, I'm going to object.</p> <p>18 This is cumulative. We went through this all on the first day,</p> <p>19 both on direct and cross-examination.</p> <p>20 THE COURT: Well, what do you say in response to</p> <p>21 that, Ms. Stoll-DeBell?</p> <p>22 MS. STOLL-DeBELL: I'm trying to establish when he</p> <p>23 was an employee for Lawson and compare that to when he heard</p> <p>24 information about ePlus, and I will say this is the last</p> <p>25 question on it as well, Your Honor.</p>

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<p style="text-align: right;">1718</p> <p>Lohkamp - Direct</p> <p style="text-align: right;">1718</p> <p>1 really with those vendors, official relationship, so the</p> <p>2 purposes of having the contract was to make it a formalized</p> <p>3 process for bringing new supported punchout partners on as well</p> <p>4 as to set up the ground rules of how we were going to work</p> <p>5 together and set the expectations with that vendor with the</p> <p>6 goal of being able to support our customers who were interested</p> <p>7 in punching out using procurement punchout to that vendor</p> <p>8 website. So the contract helps us kind of establish the</p> <p>9 expectations and how we were going to work together to support</p> <p>10 our mutual customers.</p> <p>11 Q Is it possible to use Lawson's punchout product to punch</p> <p>12 out to a vendor website if the vendor is not a supported vendor</p> <p>13 by Lawson?</p> <p>14 A Yes.</p> <p>15 Q Is it possible for Lawson's customers to connect to</p> <p>16 punchout vendors' websites without using Lawson's punchout</p> <p>17 product?</p> <p>18 MR. ROBERTSON: Objection, Your Honor, vague and</p> <p>19 ambiguous. Is this just using the internet to go to a website</p> <p>20 or using a Lawson product?</p> <p>21 MS. STOLL-DeBELL: I can ask a better question, Your</p> <p>22 Honor. I'll withdraw that.</p> <p>23 THE COURT: All right.</p> <p>24 Q Is it possible to use an internet browser to connect to a</p> <p>25 punchout vendor's website?</p>	<p style="text-align: right;">1720</p> <p style="text-align: right;">1720</p> <p>1 to connect to a customer specific private StaplesLink.com</p> <p>2 website; is that correct?</p> <p>3 MR. ROBERTSON: Objection, relevancy, Your Honor.</p> <p>4 We're talking about using a Lawson product, not using the</p> <p>5 simple internet browser. This has nothing relevant to the</p> <p>6 accused systems.</p> <p>7 THE COURT: I'm inclined to agree with him, Ms.</p> <p>8 Stoll-DeBell. I was trying to see what the difference was, but</p> <p>9 I think the objection is sustained.</p> <p>10 MS. STOLL-DeBELL: I think that's all the questions I</p> <p>11 have for right now.</p> <p>12 THE COURT: Any cross-examination?</p> <p>13</p> <p>14 CROSS-EXAMINATION</p> <p>15 BY MR. ROBERTSON:</p> <p>16 Q Good afternoon, Mr. Lohkamp.</p> <p>17 A Good afternoon.</p> <p>18 Q I understand you have these punchout trading partners that</p> <p>19 you have contracts with and punchout trading partners that you</p> <p>20 don't have contracts with; right?</p> <p>21 A Correct.</p> <p>22 Q But other than not having, for example, a defined contract,</p> <p>23 I think that's what you said; that was one of the benefits of</p> <p>24 having a contract?</p> <p>25 A That was one of the benefits, yes.</p>
<p style="text-align: right;">1719</p> <p>Lohkamp - Direct</p> <p style="text-align: right;">1719</p> <p>1 MR. ROBERTSON: Objection, Your Honor, relevancy.</p> <p>2 MS. STOLL-DeBELL: Your Honor, I think it goes --</p> <p>3 THE COURT: Why does that have anything to do with</p> <p>4 this case?</p> <p>5 MS. STOLL-DeBELL: I think it goes to the</p> <p>6 relationship and connection between Lawson and the punchout</p> <p>7 vendor and how the punchout vendor's website works.</p> <p>8 THE COURT: They are different websites. The</p> <p>9 testimony he gave earlier, or somebody gave, was if you go on</p> <p>10 the internet, you get one website. If you go through the</p> <p>11 punchout you get another, I think. Isn't that right? Ask him.</p> <p>12 I think -- if you go through the internet to get to what was --</p> <p>13 a website of somebody who is your punchout partner, you get the</p> <p>14 internet site or not, the regular site?</p> <p>15 THE WITNESS: For certain vendors, for example, like</p> <p>16 StaplesLink.com, you can go directly to StaplesLink.com versus</p> <p>17 going through punchout through a browser.</p> <p>18 THE COURT: But if you go through the punchout, it's</p> <p>19 a different website; isn't it?</p> <p>20 THE WITNESS: You would be logged in to -- it would</p> <p>21 be the same website. You'd be logged into StaplesLink.com.</p> <p>22 THE COURT: So it's true for some of them but not for</p> <p>23 all of them.</p> <p>24 THE WITNESS: I am not familiar with all of them.</p> <p>25 Q So with StaplesLink.com, you can use an internet browser</p>	<p style="text-align: right;">1721</p> <p>Lohkamp - Cross</p> <p style="text-align: right;">1721</p> <p>1 Q So we're all clear on this, it doesn't matter for a</p> <p>2 contract punchout trading partner of Lawson's or noncontract</p> <p>3 trading partner of Lawson's, the technology never changes;</p> <p>4 right?</p> <p>5 A That's correct.</p> <p>6 Q And isn't it true that the vast majority of Lawson's</p> <p>7 punchout trading partners are noncontractual; right?</p> <p>8 A Yes.</p> <p>9 Q And but yet you work with these noncontractual punchout</p> <p>10 partners to the mutual benefit of both companies just like you</p> <p>11 do with your contractual partners; right?</p> <p>12 A No.</p> <p>13 Q So, I see. Because there's a contract, you have a mutual</p> <p>14 benefit, and because you don't have a contract, there's no</p> <p>15 mutual benefit?</p> <p>16 A I thought I understood you to say they work with them the</p> <p>17 same way.</p> <p>18 Q I'm wondering -- it doesn't matter whether you have a</p> <p>19 contract or don't have a contract. It's still mutually</p> <p>20 beneficial to both Lawson and its punchout trading partners to</p> <p>21 have that relationship; right?</p> <p>22 A Yes.</p> <p>23 MR. ROBERTSON: That's all I have, Your Honor. Thank</p> <p>24 you.</p> <p>25 THE COURT: Any redirect?</p>

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<p>1750</p> <p>1 that prong of the construction would be satisfied.</p> <p>2 But that information is not published by a vendor,</p> <p>3 either a supplier, manufacturer or distributor. It's</p> <p>4 carefully handpicked by a customer. A customer</p> <p>5 decides what to import into that item master database,</p> <p>6 and it doesn't constitute a catalog or even multiple</p> <p>7 catalogs.</p> <p>8 Q What is your understanding as to what an item</p> <p>9 master does in the Lawson systems?</p> <p>10 A Item master, I think, is intended to represent the</p> <p>11 universe of items that an employee of a corporation is</p> <p>12 able to buy regardless of what the source may be.</p> <p>13 Q What's your understanding as to what sort of</p> <p>14 information is in the item master in the Lawson</p> <p>15 systems?</p> <p>16 A It has information about items. It would have</p> <p>17 their name, it would have a catalog number, it may</p> <p>18 have an identification of who's selling the item, an</p> <p>19 identification of who manufactured the item. It has</p> <p>20 information about any special pricing terms that are</p> <p>21 available to this particular customer because of</p> <p>22 contracts that they may have entered into with</p> <p>23 suppliers, and other information that the user of the</p> <p>24 system finds useful to associate with particular</p> <p>25 items.</p>	<p>1752</p> <p>1 Q What sort of information does the item master have</p> <p>2 about a customer's inventory of a given item?</p> <p>3 A One piece of information is quantity on hand.</p> <p>4 Another piece of information that be where the item</p> <p>5 can be found, where the inventory is physically</p> <p>6 located.</p> <p>7 Q When you say where it can be found or located, are</p> <p>8 you talking about where at the customer's premises it</p> <p>9 could be located or something else?</p> <p>10 A It may be that -- well, the customer is typically</p> <p>11 going to have information about how much of that</p> <p>12 particular item he has on hand on his premises. He</p> <p>13 generally doesn't know how much a vendor would have</p> <p>14 available.</p> <p>15 Q Are you familiar with how the item descriptions</p> <p>16 are created for purposes of the item master?</p> <p>17 A Not in detail. There's a field in item master</p> <p>18 that allows for a description of a product. Those</p> <p>19 descriptions can be imported from files provided by</p> <p>20 vendors or they can be hand created by the customer.</p> <p>21 Q Have you seen some documents in this case relating</p> <p>22 to Lawson where they refer to features of the Lawson</p> <p>23 systems in terms of being able to load vendor catalog</p> <p>24 data and the like?</p> <p>25 A Yes.</p>
<p>1751</p> <p>1 Q Can you summarize for me the differences between</p> <p>2 the Lawson systems item master and catalogs as the</p> <p>3 Court construed it?</p> <p>4 A Well, a catalog is a compendium of information</p> <p>5 about the things that a vendor is offering for sale.</p> <p>6 THE COURT: I've defined what a catalog is</p> <p>7 and that's the end of it. Whether anybody agrees with</p> <p>8 it, that's the catalog definition.</p> <p>9 MR. McDONALD: Sure.</p> <p>10 THE COURT: We're not going to have him</p> <p>11 defining the catalogs. I've told you-all that before.</p> <p>12 MR. McDONALD: That wasn't my intent.</p> <p>13 THE COURT: Well, he did. He started off</p> <p>14 defining it. So let's don't have it. And I don't</p> <p>15 really want to have to deal with this problem, Mr.</p> <p>16 McDonald. He can testify, but I don't want to have to</p> <p>17 be constantly monitoring whether there's compliance</p> <p>18 with the requirement that the terms are those defined</p> <p>19 by the Court.</p> <p>20 BY MR. McDONALD:</p> <p>21 Q Do you have an understanding as to whether or not</p> <p>22 the item master in the Lawson systems includes</p> <p>23 information about a customer's inventory of a given</p> <p>24 item?</p> <p>25 A Yes.</p>	<p>1753</p> <p>1 Q Given that those documents do use the term</p> <p>2 "catalogs," why is it that you concluded that that</p> <p>3 wouldn't indicate that the item master has multiple</p> <p>4 catalogs?</p> <p>5 MR. ROBERTSON: Objection to the form of that</p> <p>6 question, Your Honor.</p> <p>7 THE COURT: What is objectionable about the</p> <p>8 form? That different documents have different reasons</p> <p>9 or that he can't testify to it or what?</p> <p>10 MR. ROBERTSON: He can't testify and</p> <p>11 characterize what those documents mean and whether</p> <p>12 they do doesn't mean they comply with the Court's</p> <p>13 claim construction because they use the term</p> <p>14 "catalog."</p> <p>15 THE COURT: So the objection to the form of</p> <p>16 the question is that he doesn't have any basis for</p> <p>17 knowing what the author of a particular document</p> <p>18 meant. Is that right, Mr. Robertson?</p> <p>19 MR. ROBERTSON: Yes. Thank you for</p> <p>20 articulating that for me, sir.</p> <p>21 THE COURT: What's your response to that, Mr.</p> <p>22 McDonald?</p> <p>23 MR. McDONALD: I don't think my question was</p> <p>24 asking what the author of the documents meant. I was</p> <p>25 asking basically for how he incorporated his analysis</p>

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<p>1766</p> <p>1 BY MR. McDONALD:</p> <p>2 Q Dr. Shamos, can we turn now to slide No. 17 here</p> <p>3 and your reason No. 2 for non-infringement. This is</p> <p>4 another slide you prepared; is that correct?</p> <p>5 A Yes.</p> <p>6 Q What is your reason No. 2 for non-infringement?</p> <p>7 A Ten of the 12 claims require selecting catalogs to</p> <p>8 search. If there's no catalog, and certainly if</p> <p>9 there's not more than one catalog, it's not possible</p> <p>10 to select catalogs to search.</p> <p>11 Q Do you have and understanding from reading</p> <p>12 Dr. Weaver's report as to what he is saying is how</p> <p>13 Lawson system selects a catalog or catalogs to search?</p> <p>14 A I don't recall it sitting here.</p> <p>15 Q All right.</p> <p>16 THE COURT: I didn't hear what you said.</p> <p>17 THE WITNESS: I don't recall it sitting here.</p> <p>18 I'm sure I read it. I just can't spit it back out</p> <p>19 now.</p> <p>20 Q Do you recall whether Dr. Weaver in his report</p> <p>21 talked about a keyword search relating to selecting</p> <p>22 catalogs to search for purposes of the claims in this</p> <p>23 case?</p> <p>24 A I do recall that.</p> <p>25 Q What is your understanding as to the reason</p>	<p>1768</p> <p>1 the keyword "Dell," then that particular record would</p> <p>2 be retrieved. But that describes what's retrieved.</p> <p>3 It doesn't describe what gets searched. What gets</p> <p>4 searched is all of item master.</p> <p>5 Q So is it your understanding that these claims</p> <p>6 require that you select the catalogs to search and</p> <p>7 then search them?</p> <p>8 A Well, the claims do require that. The selecting</p> <p>9 step is just the selecting step, but then the search</p> <p>10 is then restricted to those catalogs that are</p> <p>11 selected.</p> <p>12 Q In the Lawson keyword search, does it not have</p> <p>13 that process then, is that what you're saying, of</p> <p>14 selecting catalogs to search and then searching them?</p> <p>15 A That's correct. There's only item master.</p> <p>16 Q Now, if we could return to Claim One of the '172</p> <p>17 patent. I think I might have overlooked it. There</p> <p>18 was a second reason. That one claim, that doesn't</p> <p>19 explicitly use the word "catalogs," at least another</p> <p>20 reason it doesn't infringe in your opinion other than</p> <p>21 the one you already described; is that correct?</p> <p>22 A I think so.</p> <p>23 Q Could we turn to slide No. 13, please? Did you</p> <p>24 also put together this slide Dr. Shamos?</p> <p>25 A Yes.</p>
<p>1767</p> <p>1 Dr. Weaver says the Lawson system selects catalogs to</p> <p>2 search?</p> <p>3 A I couldn't make any sense out of it. There's a</p> <p>4 keyword search function and it's --</p> <p>5 Q When you say "keyword search function," what are</p> <p>6 you talking about right now?</p> <p>7 A So, for example, if I wanted to --</p> <p>8 Q I'm just saying what system?</p> <p>9 A S3.</p> <p>10 Q The Lawson system?</p> <p>11 A The Lawson system yes.</p> <p>12 Q So you're talking about the keyword search in the</p> <p>13 Lawson system, right?</p> <p>14 A Yes.</p> <p>15 Q I'm sorry. Go ahead.</p> <p>16 A If a keyword appears in a record in the item</p> <p>17 master database, then it can be retrieved using</p> <p>18 keyword search. If, for example, and I think this has</p> <p>19 something to do with the example in Dr. Weaver's</p> <p>20 report, suppose when I was entering the description of</p> <p>21 an item I happen to also put the manufacturer's name</p> <p>22 in there like Dell, for example, for a computer</p> <p>23 manufacturer. So instead of just saying and X3D</p> <p>24 computer, I put Dell X3D.</p> <p>25 And then later on someone went and searched for</p>	<p>1769</p> <p>1 Q This relates to that 12th claim that does not</p> <p>2 explicitly use the word "catalog," is that correct?</p> <p>3 A Yes.</p> <p>4 Q What are you trying to portray to us here in this</p> <p>5 slide with respect to your analysis of why Claim One</p> <p>6 of the '172 patent is not infringed?</p> <p>7 A One of the elements of that claim is means for</p> <p>8 generating an order list. And what I have after that</p> <p>9 first bullet point, the function and structure. The</p> <p>10 function is taken from the Court's construction.</p> <p>11 Structure, I took the first part of the Court's</p> <p>12 construction. I left off the specific examples of</p> <p>13 structure that were in the construction. But that's</p> <p>14 because I don't think that's necessary on this</p> <p>15 particular slide.</p> <p>16 The question is: If there can't be an order list,</p> <p>17 then there certainly can't be a means for generating</p> <p>18 an order list.</p> <p>19 And the construction of order list is a list of</p> <p>20 desired catalog items. And if there's no catalog, you</p> <p>21 can't have a list of desired catalog items. You could</p> <p>22 have a list of desired items.</p> <p>23 MR. McDONALD: Can we go to Plaintiff's</p> <p>24 Exhibit No. 3? Is that the '172 patent, Plaintiff's</p> <p>25 Exhibit 3?</p>

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<p>1786</p> <p>1 instructions that we think will be appropriate.</p> <p>2 THE COURT: Several? How about one good one?</p> <p>3 MS. STOLL-DeBELL: One with many facets, Your</p> <p>4 Honor.</p> <p>5 THE COURT: Listen, I'm going to make you sit</p> <p>6 on the jury. I think every lawyer ought to have to</p> <p>7 sit on a jury and ought to have to listen to these</p> <p>8 instructions and try to figure out what do they mean.</p> <p>9 Because if you read them from the jury's standpoint,</p> <p>10 particularly these model instructions in the patent</p> <p>11 area, what they're doing is -- nobody has really made</p> <p>12 a real good effort to simplify them yet.</p> <p>13 Judge Spencer did better in SAP in</p> <p>14 simplifying the instructions than almost anybody I've</p> <p>15 ever seen, but there have with some legal changes</p> <p>16 since that time that prohibit me from adopting them</p> <p>17 full scale.</p> <p>18 All right. That takes care of them. I'm not</p> <p>19 real hopeful that you're going to get your evidence or</p> <p>20 I don't think you ought to be hopeful that you're</p> <p>21 going to get that evidence in, Mr. Robertson, because</p> <p>22 it seems to me it invites the jury to speculate and</p> <p>23 it's a problem, I think.</p> <p>24 MR. ROBERTSON: I understand, Your Honor.</p> <p>25 We're also concerned about prejudice given the fact we</p>	<p>1788</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1787</p> <p>1 proffered that in good faith when it came up with the</p> <p>2 witness that he had a lay opinion as to his intent. I</p> <p>3 thought it was relevant then because his lay opinion</p> <p>4 as to the intent I didn't think was very persuasive,</p> <p>5 but if you go get a legal opinion on these issues that</p> <p>6 obviously involve the patents, and then you make the</p> <p>7 conscious decision not to disclose it, I think that's</p> <p>8 part of the circumstantial evidence they can consider.</p> <p>9 I understand Your Honor's ruling.</p> <p>10 THE COURT: I haven't rules.</p> <p>11 MR. ROBERTSON: I understand Your Honor's</p> <p>12 suggestion which way you might rule, but you're going</p> <p>13 to be fair and read the papers.</p> <p>14 THE COURT: I thought maybe if I gave you all</p> <p>15 some insight into where I was right now since we're on</p> <p>16 the fly that your arguments might be better informed</p> <p>17 in the morning, just as my thinking will be better</p> <p>18 informed if I read what you-all tendered for me to</p> <p>19 read.</p> <p>20 Thank you so much for the overnight present.</p> <p>21 I appreciate it.</p> <p>22</p> <p>23 (The proceedings were adjourned at 5:26 p.m.)</p> <p>24</p> <p>25</p>	

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<p>1789</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 14, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 26 909 East Main Street 27 Suite 1200 28 Richmond, Virginia 23219-3095 29 Counsel for the plaintiff 30 31 Peppy Peterson, RPR 32 Official Court Reporter 33 United States District Court</p>	<p>1791</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, and Mr. William D. Schultz represent 9 the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Plaintiff is, Your Honor. 11 MR. McDONALD: Yes, we are. 12 THE COURT: All right. Ladies and gentlemen, I'm 13 pleased to report to you my unofficial survey that the economy 14 is recovered. For the first time in 40 years of trading at the 15 Westhampton Bakery, I had to wait 20 to 30 minutes even to get 16 served, and this the lowest period of the year for that bakery, 17 they tell me. So I just wanted you to know, but I told them I 18 was waiting because I had promised you would get your donuts 19 and I don't want to be guilty. 20 Dr. Shamos, I saw him earlier. Dr. Shamos, I remind 21 you -- everybody is renaming you, aren't they? 22 THE WITNESS: We'll see. 23 THE COURT: I remind you you are under the same oath 24 you took yesterday, sir. 25 THE WITNESS: Yes, sir.</p>
<p>1790</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1792</p> <p>1 THE COURT: Thank you. 2 3 MICHAEL I. SHAMOS, 4 a witness, called by the defendant, having been previously 5 duly sworn, testified as follows: 6 DIRECT EXAMINATION 7 BY MR. McDONALD: (resuming) 8 Q Good morning, Dr. Shamos. How are you? 9 A Good morning. I'm good. 10 Q I would like to pick up where we left off, if I got it 11 right anyway here this morning, with this slide showing some of 12 the elements of claim one of the '516 patent on this slide that 13 you put together. Can you walk us through -- 14 THE COURT: Mr. McDonald, excuse me. Just for 15 orientation purposes, when we left off, you had said that you 16 were going through each claim one by one to show, and that's 17 what you are doing. 18 MR. McDONALD: Thank you, yes. 19 THE COURT: I said it's a good time to take a break, 20 so that's what we'll be doing now, is hearing Dr. Shamos's 21 opinion on each claim that's at issue. 22 Q We have the 12 claims. We're going to take them one at a 23 time; right, Dr. Shamos? 24 A Yes. 25 Q Okay. So let's start here with what you have on your</p>

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<p>1817</p> <p>1 whether or not the Lawson accused system satisfies that element 2 of claim nine? 3 A Yes. In order for there to be a second identification 4 code, there has to be a second catalog, and even if there's one 5 catalog, there weren't two catalogs in S3. So that element 6 can't be present. 7 Q Is there some language in this element about the second 8 item being, quote, generally equivalent? 9 A Yes. 10 Q Do you have an opinion as to whether in the Lawson system, 11 the Lawson systems accused here, satisfy that part of that 12 element? 13 A There's no notion in the Lawson systems of general 14 equivalents. There's no way to ask the system for a generally 15 equivalent item. 16 Q Do you have an understanding as to what aspect of the 17 Lawson system is dependent in this case to satisfy that part of 18 that element? 19 A Only from expert reports. 20 Q Let's go to slide 30 then, if we can turn to that, Bill. 21 Dr. Weaver, did you look at -- 22 MR. ROBERTSON: Dr. Weaver? 23 A I am Shamos. 24 MR. McDONALD: I made it this far today. 25 Q Dr. Shamos, did you look at all at the issue of whether or</p>	<p>1819</p> <p>1 that has the same UNSPSC code. So there's no converting that's 2 going on. There's no matching that goes on with respect to 3 UNSPSC codes even though they may be physically present in the 4 database. 5 Q You have here, and this is another slide we have up on the 6 screen that you prepared; is that right? 7 A Yes. 8 Q On the last point there, what's the last bullet point? 9 Can you explain what you meant by that? 10 A It's only within RSS, not the totality of the systems that 11 are accused. It's only RSS that allows even searching of the 12 UNSPSC code. 13 Q Can we turn to the next slide, please, 31. 14 A Yes. 15 Q Is this another slide you put together, Dr. Shamos? 16 A Well, I put it together, but literally it's copied out of 17 a white paper that was published explaining what UNSPSC codes 18 are. So I didn't write the words that are on the slide except 19 for the title. 20 THE COURT: In other words, you made the slide. 21 THE WITNESS: I made the slide. I had an electronic 22 copy of that white paper. I had it on the screen. I used a 23 photo editor, and I did a screen capture and then cropped it 24 down and stuck it on the slide directly out of that UNSPSC 25 white paper.</p>
<p>1818</p> <p>1 not in the Lawson system the use of the UNSPSC codes would 2 satisfy any claim elements of any of the asserted claims in 3 this case relating to generally equivalent items? 4 A Did I look at that? 5 Q What was your conclusion about that? 6 A That it doesn't. 7 Q Why not? 8 A So, the UNSPSC code is a generally accepted international 9 coding to categorize products. There's a big difference 10 between desks and chairs, and so if you gave a code to desks, 11 you could immediately tell that something was a desk and it 12 wasn't a chair. And it happens to be hierarchically organized. 13 That is, it has different levels, so you can get to office 14 furniture, and then within office furniture you could have 15 desks, and then within desks you can desks with drawers or 16 without drawers, et cetera. 17 The Lawson software does provide the ability for a 18 customer to enter UNSPSC codes into the item master database if 19 he wants to do that, and sometimes it's useful for people who 20 are ordering things to know what the UNSPSC code is associated 21 with a particular item, but those UNSPSC codes are not used for 22 the purpose of determining whether things are generally 23 equivalent. 24 There's no automatic conversion. I can't go and say, if 25 you're out of stock of this product, please give me another one</p>	<p>1820</p> <p>1 Q Can you tell us in a nutshell, Dr. Shamos, what your main 2 point was for putting together this particular slide as it 3 relates to your testimony here? 4 A Yes. It was to show this eight-digit classification of 5 items and why it's hierarchical. This is the UNSPSC 6 explanation of what these codes look like. The code, as you 7 can see at the bottom where it says pen refills equals UNSPSC 8 classification 44-12-19-03. 9 The significance of those numbers, 12, 19, and 03, depend 10 on the fact that they are coming from 44. So 44 is office 11 equipment, accessories, and supplies. Within that, 12 is 12 office supplies. Within 12, 19 is ink and led refills, and 13 within 19, 03 is pen refills. And so what 44-12-19-03 tells 14 you is it's a pen refill. 15 It doesn't tell you what kind of pen, and so if I want to 16 buy a refill for my pen, it's going to have to have -- if 17 there's any UNSPSC classification at all, it's going to have to 18 have 44, 12, 19, 03, but I can't just buy any pen refill. It 19 has to fit in that particular pen. So these UNSPSC codes don't 20 describe substitutable or generally equivalent items. 21 Q Can we turn to the next slide, please, number 32. I think 22 you've essentially already covered the first three bullet 23 points on this slide? 24 A Yes, we can go right to number four. 25 Q What was your point with bullet point number four?</p>

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<p>1885</p> <p>1 MR. ROBERTSON: All right.</p> <p>2 THE COURT: Just remember, the witness is</p> <p>3 here. And I know zealous advocacy animates us all to</p> <p>4 get enthusiastic about our causes, but remember the</p> <p>5 concept of civility and politeness governs all court</p> <p>6 proceedings. And I'm not suggesting you weren't civil</p> <p>7 and polite, but don't let it get out of hand.</p> <p>8 MR. ROBERTSON: Yes, sir.</p> <p>9 BY MR. McDONALD:</p> <p>10 Q The next bullet point that you have here is when</p> <p>11 Lawson software is installed, the item master is</p> <p>12 empty. Do you see that?</p> <p>13 A Well, in a second.</p> <p>14 THE COURT: Wait a minute.</p> <p>15 Q I apologize. Do we have the slides. Why don't we</p> <p>16 do that?</p> <p>17 THE COURT: What system are we working with?</p> <p>18 Your system? So Mr. Neal can activate the ePlus side</p> <p>19 of things.</p> <p>20 Q The second bullet point says, When the Lawson</p> <p>21 software is installed, the item master is empty,</p> <p>22 correct?</p> <p>23 A Yes.</p> <p>24 Q But you understand from your review of the</p> <p>25 document that Lawson also provides services,</p>	<p>1887</p> <p>1 anyone.</p> <p>2 A The catalog has to be published by a vendor. If</p> <p>3 the information is merely selected by a customer, it's</p> <p>4 not published by a vendor.</p> <p>5 Q So you have your own construction of what</p> <p>6 "published by a vendor" means?</p> <p>7 A No.</p> <p>8 MR. McDONALD: Objection, Your Honor.</p> <p>9 THE COURT: Overruled.</p> <p>10 Q Are you aware of the Court's construction?</p> <p>11 A Yes.</p> <p>12 Q The Court says "published by a vendor" simply</p> <p>13 means that at some point in time a vendor, such as a</p> <p>14 supplier, a manufacturer, or a distributor has made</p> <p>15 generally known or has disclosed an organized</p> <p>16 collection of items and associated information</p> <p>17 preferably but not necessarily including all these</p> <p>18 descriptions for the product.</p> <p>19 MR. McDONALD: Your Honor, I don't think he</p> <p>20 read the very first sentence of the Court's</p> <p>21 construction.</p> <p>22 THE COURT: I also don't think I said</p> <p>23 anything about disclosed. I don't know where you got</p> <p>24 that.</p> <p>25 MR. ROBERTSON: I'm looking at what was</p>
<p>1886</p> <p>1 implementation in which they will either migrate the</p> <p>2 data from a legacy system to the new Lawson system or</p> <p>3 they'll assist the customers in loading the item data,</p> <p>4 correct?</p> <p>5 A Yes, I've testified to that.</p> <p>6 Q When the Court was construing "catalog," it was</p> <p>7 referring to this collection of items and associated</p> <p>8 information that is existing in electronic format in</p> <p>9 the database, right? You understood that in the</p> <p>10 context of the patent?</p> <p>11 A I thought you just told me to take "database" out</p> <p>12 of the claim.</p> <p>13 Q Well, I told you to take the single database out</p> <p>14 of the claim, but you understand that that's where</p> <p>15 this information, this electronic information, data,</p> <p>16 resides, correct, in the Lawson system? The item</p> <p>17 master, the database, right?</p> <p>18 A Yes.</p> <p>19 Q The next bullet point you say is an item master</p> <p>20 data is selected by inclusion by a customer. Do you</p> <p>21 see that?</p> <p>22 A Yes.</p> <p>23 Q And not a vendor. Tell me where in the Court's</p> <p>24 claim construction that the Judge has said that the</p> <p>25 actual selection of the item data has to be made by</p>	<p>1888</p> <p>1 handed out, Your Honor, I think.</p> <p>2 THE COURT: Well, that was what you-all got.</p> <p>3 That isn't what I read. What I read was published by</p> <p>4 a vendor as used in the definition of the claim term</p> <p>5 "catalog/product catalog."</p> <p>6 "Published" simply means to make generally</p> <p>7 known. At one time I was thinking about "or to</p> <p>8 disclose," but I didn't say that. "Published by a</p> <p>9 vendor" simply means that at some point in time a</p> <p>10 vendor such as a supplier, a manufacturer or a</p> <p>11 distributor has made generally known or has disclosed</p> <p>12 an organized collection of items or associated</p> <p>13 information preferably but not necessarily including a</p> <p>14 part number, price, catalog number, vendor name,</p> <p>15 vendor ID, a textual description of the item, and</p> <p>16 images of or relating to the item. And it should be</p> <p>17 items and associated information, I think. But that's</p> <p>18 what I think I read.</p> <p>19 MR. ROBERTSON: I thought I was asking him</p> <p>20 whether it just needs to be made generally known or</p> <p>21 disclosed. I think Your Honor said --</p> <p>22 THE COURT: I didn't say "disclosed." I took</p> <p>23 it out when I read it. You've got a typographically</p> <p>24 erroneous description.</p> <p>25 MR. ROBERTSON: All right, Your Honor. I</p>

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<p>1893</p> <p>1 catalog that was published by a vendor.</p> <p>2 Q Well, the item master doesn't have to be published</p> <p>3 by the vendor, does it? It's the collection of</p> <p>4 information -- excuse me. It's the organized</p> <p>5 collection of items and associated information that's</p> <p>6 published by a vendor, correct?</p> <p>7 A But that's what a catalog is. The vendor</p> <p>8 publishes the catalog.</p> <p>9 Q The vendor makes that organized collection of</p> <p>10 items and associated information available to the</p> <p>11 customer, right?</p> <p>12 A Yes, the vendor publishes the catalog. I don't</p> <p>13 think there's any doubt about that.</p> <p>14 Q Okay. So that's all that's required of the claim</p> <p>15 that the vendor publish the catalog?</p> <p>16 THE COURT: Is that a question?</p> <p>17 Q Isn't that correct?</p> <p>18 MR. McDONALD: Object to the form.</p> <p>19 THE COURT: Overruled.</p> <p>20 A No. If there's to be a catalog in the Lawson</p> <p>21 system, the catalog had to have been published by the</p> <p>22 vendor.</p> <p>23 Q Fine. So point to the language then in the</p> <p>24 Court's construction of "catalog" that you rely on to</p> <p>25 say that this organized collection of items and</p>	<p>1895</p> <p>1 published by the phone company even though it has</p> <p>2 phone numbers of some people in it.</p> <p>3 Q Where in the Court's construction of "catalog"</p> <p>4 does it say that you have to have all of the item</p> <p>5 information included?</p> <p>6 A Well, I don't think that it says all. I know it</p> <p>7 doesn't say all, and I don't think you have to have</p> <p>8 all.</p> <p>9 Q Where does it say you have to have most?</p> <p>10 A There's a matter of degree.</p> <p>11 Q Where does it say that in here? It just says "a</p> <p>12 collection of items and associated information."</p> <p>13 A Published by a vendor. The question is: What's</p> <p>14 published by a vendor?</p> <p>15 Q And you interpret that as meaning you have to have</p> <p>16 how much?</p> <p>17 A I don't know. There's some point at which it's no</p> <p>18 longer published by a vendor in the same sense that my</p> <p>19 address book is not published by the phone company.</p> <p>20 Q If I have 50 percent of it, is that enough?</p> <p>21 A I don't know.</p> <p>22 Q 75 percent?</p> <p>23 A I don't know.</p> <p>24 Q You know that the system, the Lawson system, is</p> <p>25 capable of incorporating all of the item data from an</p>
<p>1894</p> <p>1 associated information has to be selected by the</p> <p>2 customer, not somebody else.</p> <p>3 A It's not that it has to be selected by the</p> <p>4 customer. It is selected by the customer, therefore,</p> <p>5 it's not an organized collection published by a</p> <p>6 vendor. I'm explaining why it doesn't meet the</p> <p>7 Court's construction, not why it does.</p> <p>8 Q So what language are you relying on?</p> <p>9 A Published by a vendor.</p> <p>10 Q That's the only language you're relying on about</p> <p>11 this organized collection of items and associated</p> <p>12 information is that it's got to be published by a</p> <p>13 vendor?</p> <p>14 A You just took me through that. We went through</p> <p>15 everything else in the Court's construction and found</p> <p>16 it was satisfied except "published by a vendor."</p> <p>17 THE COURT: I think he's made his position</p> <p>18 clear. Whether you agree with it or not is a</p> <p>19 different issue, but I think his position is clear.</p> <p>20 MR. ROBERTSON: I understand, Your Honor.</p> <p>21 I'll move on.</p> <p>22 THE COURT: Let's move on.</p> <p>23 Q Does it matter then if the customer loads just</p> <p>24 some of the item information?</p> <p>25 A Of course. My personal address book was not</p>	<p>1896</p> <p>1 electronically produced catalog from a vendor, right?</p> <p>2 A It may or may not be. That may be true for some</p> <p>3 catalogs.</p> <p>4 Q Did you make any investigation into that?</p> <p>5 A Well, I know what the structure of item master is.</p> <p>6 And item master has fields, some of which are in</p> <p>7 vendor catalogs and some of which are not in some</p> <p>8 vendor catalogs. And if there's a field in a vendor</p> <p>9 catalog for which there's no place in item master, it</p> <p>10 cannot be imported into item master.</p> <p>11 Q Does it have to import all the fields?</p> <p>12 A No.</p> <p>13 Q The Court's claim construction made clear that</p> <p>14 some of the data about the item is just preferably but</p> <p>15 not necessarily; isn't that right?</p> <p>16 A Correct.</p> <p>17 Q So it doesn't even have to include all the things</p> <p>18 that the Court identifies in its construction, right?</p> <p>19 A I never assumed it did have to include those.</p> <p>20 Q But you have seen in the item master this kind of</p> <p>21 data, haven't you? Part number, price, catalog</p> <p>22 number, vendor name, vendor ID, textual description of</p> <p>23 the item?</p> <p>24 A Yes.</p> <p>25 Q Now, you know that a system or device that is</p>

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<p>1901</p> <p>1 Dell was inserted.</p> <p>2 Q That's where you're doing the keyword search. I'm</p> <p>3 talking about the user fields that are in the system.</p> <p>4 You can actually enter into a user field a vendor</p> <p>5 name, can't you, sir?</p> <p>6 A I think you can. I'm not sure whether you can</p> <p>7 search on that field, but you can enter it.</p> <p>8 Q So you don't know one way or the other whether you</p> <p>9 can search once you have entered a vendor name in that</p> <p>10 field?</p> <p>11 A In a use defined field, I don't know.</p> <p>12 Q Would it change your opinion if there was evidence</p> <p>13 in the record that if you did enter the vendor name</p> <p>14 into one of those user fields, you could search by</p> <p>15 vendor?</p> <p>16 A No, because what you're postulating is the user</p> <p>17 taking the system and making his own additions and</p> <p>18 changes to it.</p> <p>19 Q The user of the Lawson system, according to you,</p> <p>20 populates all the data in the item master; isn't that</p> <p>21 right?</p> <p>22 A Yes, I think that's an important point.</p> <p>23 Q And if the user inserts a vendor name in one of</p> <p>24 those user defined fields that it can use, then it</p> <p>25 could search by vendor, couldn't it?</p>	<p>1903</p> <p>1 A Yes.</p> <p>2 Q So in that scenario by using the term "laptop,"</p> <p>3 which only appears in the Dell catalog, I only</p> <p>4 selected the Dell catalog to search; isn't that right?</p> <p>5 A No, that's false. It looked over the whole</p> <p>6 database. It just happened because of the</p> <p>7 circumstances you have set up that there were no</p> <p>8 responsive hits from the Home Depot catalog.</p> <p>9 Q So I got all the Dell items that corresponded to</p> <p>10 that keyword laptop and none of the items in the home</p> <p>11 Depot catalog, right?</p> <p>12 A Well, that's the output of the search, yes. But</p> <p>13 if Home Depot had had a laptop, then you would have</p> <p>14 retrieved the laptop from the Home Depot catalog.</p> <p>15 Q Well, if I added a Hewlett-Packard catalog to my</p> <p>16 catalog database with Home Depot, Dell, and now</p> <p>17 Hewlett-Packard, and I searched for laptops, I would</p> <p>18 get hits for Hewlett-Packard and Dell, right?</p> <p>19 A Yes.</p> <p>20 Q So the selection of the catalog was made by using</p> <p>21 that keyword because I didn't get any Home Depo hits,</p> <p>22 but I did get Dell and Hewlett-Packard, correct?</p> <p>23 A That's nonsense. It makes no sense at all. It's</p> <p>24 a happenstance that one particular vendor doesn't sell</p> <p>25 a thing. So by asking for pens, for example, the fact</p>
<p>1902</p> <p>1 A If the proposition is that --</p> <p>2 Q Can you answer that question fairly yes or no?</p> <p>3 THE COURT: Just a minutes. Listen to the</p> <p>4 question he asked and answer that question.</p> <p>5 THE WITNESS: Okay.</p> <p>6 A Could you repeat it?</p> <p>7 Q Sure. If the user who's populating the fields</p> <p>8 with information, price, unit of measure, textual</p> <p>9 description also uses one of these user created fields</p> <p>10 and enters a vendor name, you could search by that</p> <p>11 vendor name; isn't that right?</p> <p>12 A Yes. You could search by that vendor name, but --</p> <p>13 Q That's fine. You have answered the question.</p> <p>14 Now, let me ask you this: If I had two</p> <p>15 catalogs -- just assume I have two catalogs in the</p> <p>16 item database, the item master, a Home Depot catalog</p> <p>17 and a Dell computer catalog, right? And just assume</p> <p>18 for purposes of my question that Home Depot is not</p> <p>19 selling computers, all right?</p> <p>20 A Yes.</p> <p>21 Q If I type in a keyword "laptop," I'm not going to</p> <p>22 get any catalog data from Home Depot, am I?</p> <p>23 A Not if they don't have any laptops.</p> <p>24 Q I'm going to get laptops from the Dell computer,</p> <p>25 correct?</p>	<p>1904</p> <p>1 that you don't get a vendor who doesn't sell pens</p> <p>2 doesn't mean you have selected particular catalogs to</p> <p>3 search.</p> <p>4 There's structure in the software. The software</p> <p>5 does certain things. In Lawson, it searches the</p> <p>6 entire item master database. It's fortuitous that a</p> <p>7 particular vendor doesn't sell a particular thing.</p> <p>8 That's not a means for selection.</p> <p>9 Q Why not? It didn't come back from the Home Depot</p> <p>10 catalog.</p> <p>11 A Because there was nothing responsive in there. If</p> <p>12 you search for an item that doesn't exist, you</p> <p>13 certainly wouldn't be saying that you selected no</p> <p>14 catalogs.</p> <p>15 Q No, but if I search for an item that does exist in</p> <p>16 two catalogs that sell computers and I get results</p> <p>17 from there, I've selected those two as a subset of the</p> <p>18 three that are there?</p> <p>19 A You have not.</p> <p>20 Q All right. You understand that the item master</p> <p>21 can hold a hundred thousand items or more, correct?</p> <p>22 A Yes.</p> <p>23 Q And tens of thousands of vendors, correct?</p> <p>24 A Yes.</p> <p>25 Q And you would agree, wouldn't you, Dr. Shamos,</p>

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<p>1913</p> <p>1 independent company. It's not the plaintiff or the</p> <p>2 department, right?</p> <p>3 A It's not the plaintiff or the department. I don't</p> <p>4 know under whose auspices they created this report,</p> <p>5 but it's neither of the parties in the case.</p> <p>6 Q In any event, you relied on it when you gave your</p> <p>7 testimony about the capability of the UNSPSC, right?</p> <p>8 A Yes.</p> <p>9 Q Let's go to the page that ends with 036. And</p> <p>10 under the finding and purchasing, it says, A product</p> <p>11 and service coding convention brings many benefits to</p> <p>12 the purchasing function of the company, did I read</p> <p>13 that correctly?</p> <p>14 A Yes.</p> <p>15 Q One of the pros is that table in the first box</p> <p>16 says "enables buyers and employee requisitioners to</p> <p>17 find all suppliers of a given category," correct?</p> <p>18 A It can. If that functionality is built into the</p> <p>19 system that's using the UNSPSC code, it can, yes.</p> <p>20 Q It does it by using the codes, right?</p> <p>21 A Well, if it has the capabilities to do that.</p> <p>22 Q And the Lawson accused software had the capability</p> <p>23 of using these UNSPSC codes. We just saw the fields.</p> <p>24 A Yes.</p> <p>25 Q I want you to look at the page of this white paper</p>	<p>1915</p> <p>1 Q This is Plaintiff's Exhibit 32.</p> <p>2 Why don't we move on while we're looking for that.</p> <p>3 At least this white paper that you relied on</p> <p>4 identifies those commodity levels, codes, as</p> <p>5 substitutable products, correct?</p> <p>6 A Oh, it says that.</p> <p>7 Q Using your examples, if I went down and I got some</p> <p>8 pen refills, couldn't I then look after I've used</p> <p>9 those codes to find the search just by looking at it,</p> <p>10 find something that I considered to be generally</p> <p>11 equivalent that I want to purchase?</p> <p>12 A You may or may not be able to do that.</p> <p>13 Q So in some instances I could do it, right?</p> <p>14 A Oh, yes.</p> <p>15 Q You'd agree with me, sir, that this Lawson</p> <p>16 software is not something that you can buy at the</p> <p>17 local Best Buy for software and load it onto your</p> <p>18 computer, right?</p> <p>19 A I don't think so. I'm expecting that it's</p> <p>20 probably above their price point.</p> <p>21 Q And it sometimes takes months to implement this</p> <p>22 software; isn't that right?</p> <p>23 A That sounds right.</p> <p>24 Q And it can cost tens of thousands, even hundreds</p> <p>25 of thousands of dollars, right?</p>
<p>1914</p> <p>1 you relied on that ends with 042. Do you see that at</p> <p>2 the bottom? It says UNSPSC is a hierarchal</p> <p>3 classification having five fields.</p> <p>4 A Levels, it says.</p> <p>5 Q Excuse me. Five levels, I apologize. The levels</p> <p>6 allow users to search products more precisely because</p> <p>7 searches will be confined to logical categories and</p> <p>8 eliminate irrelevant hits. It allows managers to</p> <p>9 perform expenditures analysis on categories that are</p> <p>10 relevant to the company's situation. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q Now, you went through the segment level, the</p> <p>13 family level, the class level, and the commodity</p> <p>14 level, do you see that?</p> <p>15 A Yes.</p> <p>16 Q Under commodity, doesn't this white paper</p> <p>17 represent that when you get to that level, you have a</p> <p>18 group of substitutable products or services, correct?</p> <p>19 A Well, I think they say that, but it's clearly not</p> <p>20 correct.</p> <p>21 Q Well, do you know that they have classifications</p> <p>22 down to like, say, for specific white-out right down</p> <p>23 to that level?</p> <p>24 A Well, I don't think you can. There are only two</p> <p>25 digits down at that level.</p>	<p>1916</p> <p>1 A That sounds right.</p> <p>2 MR. McDONALD: Objection. We don't need to</p> <p>3 get into the revenues for things, I think, at this</p> <p>4 point to make whatever point he's trying to make.</p> <p>5 THE COURT: I'm not sure why that's relevant.</p> <p>6 MR. ROBERTSON: I'll move on, Your Honor.</p> <p>7 BY MR. ROBERTSON:</p> <p>8 Q So you understand as part of your review of the</p> <p>9 documents in this case in forming your opinions that</p> <p>10 Lawson employees can be at a customer's facilities for</p> <p>11 months to design, install, implement, configuration</p> <p>12 and test the system for the customer, correct?</p> <p>13 A I don't think I was aware of the specific amount</p> <p>14 of time that they would spend, but I was aware that</p> <p>15 they do go to customer sites to assist with</p> <p>16 implementation.</p> <p>17 Q In reviewing the documents in this case, you saw</p> <p>18 manuals and guides that are provided to the customers</p> <p>19 to an assist them in how to operate the software?</p> <p>20 A Yes.</p> <p>21 MR. McDONALD: Your Honor, I think this is</p> <p>22 outside the scope of his testimony and his report. It</p> <p>23 really isn't an issue in dispute here.</p> <p>24 MR. ROBERTSON: We talked about induced</p> <p>25 infringement, Your Honor. I just wanted to ask some</p>

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<p>1925</p> <p>1 THE COURT: Do you have a copy of his report</p> <p>2 for him?</p> <p>3 MR. ROBERTSON: Yes, sir.</p> <p>4 THE COURT: What paragraph?</p> <p>5 MR. ROBERTSON: Paragraph 134, on page 40.</p> <p>6 THE COURT: Page 40, paragraph 134, Dr.</p> <p>7 Shamos, is what he's going to ask you about.</p> <p>8 BY MR. ROBERTSON:</p> <p>9 Q You indicate here that as a hypothetical</p> <p>10 proposition, it's possible in a sense to avoid</p> <p>11 searching an entire database each time by creating</p> <p>12 indexes that allow particular records containing</p> <p>13 specific data to be located quickly. Did you say that</p> <p>14 in that your report?</p> <p>15 A Yes, it says "in a sense."</p> <p>16 Q Thank you. You also said in this regard, a</p> <p>17 database index is similar to the index of a book which</p> <p>18 makes it unnecessary to scan the entire book to locate</p> <p>19 the occurrence of a word each time a search is</p> <p>20 performed, correct?</p> <p>21 A Yes.</p> <p>22 Q With respect to the Punchout functionality and</p> <p>23 Punchout procurement, you understand that when the</p> <p>24 customer is using that functionality with the</p> <p>25 requisition self service module, they're operating</p>	<p>1927</p> <p>1 A The phrase I'm having trouble with is</p> <p>2 "communication protocols."</p> <p>3 THE COURT: You do not know what they are?</p> <p>4 THE WITNESS: I know what they are.</p> <p>5 THE COURT: Do you not know what he means?</p> <p>6 THE WITNESS: I think I know what he means,</p> <p>7 but I think it's different from what he said.</p> <p>8 BY MR. ROBERTSON:</p> <p>9 Q What do you understand communication protocols to</p> <p>10 mean?</p> <p>11 A Well, you can't create communication protocols</p> <p>12 over the Internet. You have to use standardized</p> <p>13 communication protocols.</p> <p>14 If what you mean is Lawson's facility have the</p> <p>15 ability to connect to the vendors so that you can</p> <p>16 search the vendor's website, the answer is yes.</p> <p>17 Q And law also creates those protocols to return the</p> <p>18 data from a vendor for inclusion into a requisition</p> <p>19 and then a purchase order; isn't that right?</p> <p>20 A I'll have a lot easier time if we don't use the</p> <p>21 word "protocols." Just say mechanism and I'll agree</p> <p>22 with you.</p> <p>23 Q Well, Lawson creates that mechanism?</p> <p>24 A Yes.</p> <p>25 Q Are you familiar with the term handshake used in</p>
<p>1926</p> <p>1 within the Lawson system during the entire process,</p> <p>2 correct?</p> <p>3 A No.</p> <p>4 Q So if there were testimony in the record with</p> <p>5 respect to that, that that is the case, would that</p> <p>6 change your opinion?</p> <p>7 MR. McDONALD: Objection. He wasn't able to</p> <p>8 hear the testimony.</p> <p>9 THE COURT: That's a proper question. It's</p> <p>10 the functional equivalent of a hypothetical. That's</p> <p>11 all right.</p> <p>12 A I'm an open-minded guy. If whoever said that</p> <p>13 would explain what he meant by it, it's possible he</p> <p>14 might change my mind, but merely hearing such</p> <p>15 testimony exists doesn't change my mind.</p> <p>16 Q You're aware that it's Lawson who creates the</p> <p>17 communication protocols with its Punchout trading</p> <p>18 partners, correct?</p> <p>19 A Okay. As a general proposition, in order</p> <p>20 to connect to --</p> <p>21 Q As a general proposition, do you agree with that?</p> <p>22 Yes or no?</p> <p>23 A Repeat it then.</p> <p>24 Q It's Lawson that creates the communication</p> <p>25 protocols used in the Punchout procurement process?</p>	<p>1928</p> <p>1 that context?</p> <p>2 A Yes.</p> <p>3 Q Lawson creates that handshake, right?</p> <p>4 A Lawson implements part of that handshake, yes.</p> <p>5 Q If there were testimony in this case that Lawson,</p> <p>6 in fact, creates that handshake, would that affect</p> <p>7 your opinions in any way?</p> <p>8 A No, because I understand how handshakes work and</p> <p>9 it's a two-way street. The vendor has to do certain</p> <p>10 things, too, as part of the handshake.</p> <p>11 Q Isn't it true in this Punchout process, selecting</p> <p>12 checkout on the shopping cart releases the requisition</p> <p>13 to the next stage of process? And checkout saves</p> <p>14 items to the cart to the requisition lines, and it</p> <p>15 goes into the requisition to the next processing</p> <p>16 stage?</p> <p>17 A Yes.</p> <p>18 Q So the shopping cart then is not the same as the</p> <p>19 final requisition, correct?</p> <p>20 A I haven't opined on that. I haven't looked at it.</p> <p>21 THE COURT: You say you haven't looked at it?</p> <p>22 THE WITNESS: I haven't looked at that. I</p> <p>23 haven't considered it.</p> <p>24 Q You were asked some questions about some of these</p> <p>25 means-plus-function claim constructions. Do you</p>

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<p>1929</p> <p>1 recall that?</p> <p>2 A Yes.</p> <p>3 Q Can we go to the page 5 of the glossary, the means</p> <p>4 for selecting product catalogs to search?</p> <p>5 You were asked about this particular claim element</p> <p>6 in Claim Three of the '683 patent?</p> <p>7 A Yes.</p> <p>8 Q One of the structures the Court indicated there is</p> <p>9 a user interface that allows the user to select a</p> <p>10 catalog, do you see that?</p> <p>11 A Yes.</p> <p>12 Q If in one of those user defined fields, I had the</p> <p>13 vendor name, the Lawson software presents a user</p> <p>14 interface that would allow me to select that vendor in</p> <p>15 that field, correct?</p> <p>16 A If you -- yes, in a sense.</p> <p>17 Q Thank you. Also in this claim construction, the</p> <p>18 Court indicated that the structure, corresponding</p> <p>19 structure, is what's described, and at the end he</p> <p>20 indicates "and their equivalents," do you see that?</p> <p>21 A Yes.</p> <p>22 Q You weren't asked by Mr. McDonald about the</p> <p>23 equivalents, were you?</p> <p>24 A No.</p> <p>25 Q If you'll go to page 3, the means for generating</p>	<p>1931</p> <p>1 A Well, no, the function isn't performed. The</p> <p>2 function has to -- first of all, there has to be a</p> <p>3 means for searching, which we didn't have, and there</p> <p>4 has to be a matching item selected by said means for</p> <p>5 searching.</p> <p>6 If you don't perform the function, it doesn't</p> <p>7 matter what structure you have.</p> <p>8 Q Well, the Court construed means for searching for</p> <p>9 matching items among the select product catalogs,</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q While we're on that one still, Mr. McDonald didn't</p> <p>13 ask you about any equivalents, did he?</p> <p>14 A In the interest of brevity, I don't think he asked</p> <p>15 me about equivalents or any of the means-plus-function</p> <p>16 elements.</p> <p>17 Q Let's go to means for searching for matching</p> <p>18 items. Now, it's your position that you can't search</p> <p>19 for matching items among the selected product catalogs</p> <p>20 because, first, you say there are no catalogs in the</p> <p>21 item master, right?</p> <p>22 A That's one reason.</p> <p>23 Q Let's assume there are catalogs there.</p> <p>24 A Yes.</p> <p>25 Q Let's assume that the vendor identified the vendor</p>
<p>1930</p> <p>1 an order list. '172 patent, Claim One.</p> <p>2 Now, for this means claim, the Court identified</p> <p>3 the corresponding structure as being a user interface</p> <p>4 operating on a computer through which a user may</p> <p>5 select from results of a search program or a search</p> <p>6 program that generates an order list of matching</p> <p>7 items; is that right?</p> <p>8 A That was almost right. I think you read one word</p> <p>9 wrong.</p> <p>10 Q Let me start over then. The Court identified the</p> <p>11 corresponding structures that are disclosed as a user</p> <p>12 interface operating on a computer through which a user</p> <p>13 may select from results a search program or a search</p> <p>14 program that generates an order list of matching</p> <p>15 items?</p> <p>16 A You omitted a word that time. I don't think it</p> <p>17 really matters.</p> <p>18 Q Tell me which word I omitted.</p> <p>19 A "From." Select from results from a search</p> <p>20 program. The second "from" was omitted.</p> <p>21 THE COURT: It probably was a typographical</p> <p>22 error, isn't it? I don't know.</p> <p>23 Q Well, in any event, the reason you say this can't</p> <p>24 be satisfied is because you say catalogs aren't</p> <p>25 present in the accused system, right?</p>	<p>1932</p> <p>1 name in one of those user defined fields. I could</p> <p>2 then select that catalog, I think you've indicated, by</p> <p>3 using the vendor name, and then I could search in it,</p> <p>4 couldn't I?</p> <p>5 A I did not indicate that, and you can't.</p> <p>6 Q Doesn't the Court indicate that the corresponding</p> <p>7 structure here is a search program and modules</p> <p>8 operating on a computer system with access to data in</p> <p>9 a database or other file system, correct?</p> <p>10 A Yes, but you were talking about selected product</p> <p>11 catalogs.</p> <p>12 Q I said assume that we have a vendor name and a</p> <p>13 vendor field and we have selected that vendor name and</p> <p>14 got results.</p> <p>15 A That's not selecting a vendor catalog. That's</p> <p>16 selecting a particular field in a database.</p> <p>17 Q Don't I get results from that is the catalog that</p> <p>18 has that vendor name?</p> <p>19 A Well --</p> <p>20 Q Can you answer that fairly yes or no? If I just</p> <p>21 search using that vendor field that I've populated</p> <p>22 with the vendor names, and I just want Dell, and I put</p> <p>23 Dell computer in that vendor name, I'll get Dell</p> <p>24 results, won't I?</p> <p>25 A Yes, you search the entire catalog to get Dell</p>

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2045

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1 and get these binders that you sent up here at the
2 very beginning, not now, because you-all are both
3 adopting a new mode, and I need the space to put in
4 the exhibits that you are using.

5 I'd like to say that I'd like to commend, and
6 it's obvious to me there's been some hard work put in
7 by the legal assistants in this case. There have been
8 very few problems, and when there have been problems,
9 they have been solved immediately. And you can't do
10 that unless you know what you're doing.

11 And the IT people, I think you-all have done
12 a fine job, too. Of course, the lawyers. I don't
13 mean to take anything away from you, but I remember
14 well who does most of the work.

15 MR. McDONALD: Your Honor, just one more
16 thing with respect to that last video that Ms. Huey
17 would like to offer.

18 MS. HUGHEY: I'd like to offer it as
19 Defendant's Exhibit 401.

20 THE COURT: What is it?

21 MS. HUGHEY: This is the transcript of what
22 was read in. My understanding is that
23 Ms. O'Loughlin's deposition transcript was read in, I
24 believe, and it will be marked as an exhibit for the
25 record.

2046

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1 THE COURT: Any objections? It's admitted.

2 THE CLERK: What number is that?

3 THE COURT: 401. Defendant's 401.

4 (Defendant's Exhibit 401 is admitted into
5 evidence.)

6 THE COURT: All right. Anything else anybody
7 has so we can get ready to go on Tuesday morning?

8 MR. McDONALD: Nothing else, Your Honor, for
9 the defense.

10 THE COURT: All right.

11 MR. ROBERTSON: Sorry, Your Honor. I didn't
12 hear you.

13 THE COURT: I just want to know if there's
14 anything else so that we can solve it and get going
15 and actively out of the box at nine o'clock Tuesday
16 morning.

17 MR. ROBERTSON: Nothing by the plaintiff.

18 THE COURT: Okay. That sounds good. All
19 right.

20

21 (The proceedings were adjourned at 5:20 p.m.)

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<p style="text-align: right;">2797</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 21, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 Jennifer A. Albert, Esquire 19 David M. Young, Esquire 20 Goodwin Procter, LLP 21 901 New York Avenue NW 22 Suite 900 23 Washington, D.C. 20001 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p style="text-align: right;">2799</p> <p>1 P R O C E E D I N G S 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated, versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiffs. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz, and Ms. Rachel 9 Hughey represent the defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. We'll take plaintiff's JMOL 13 motion first. 14 MR. ROBERTSON: Good morning, Your Honor. 15 THE COURT: Good morning. 16 MR. ROBERTSON: I'm going to be arguing plaintiff's 17 judgment as a matter of law with respect to infringement, and 18 Ms. Albert will be addressing plaintiff's judgment as a matter 19 of law with respect to the invalidity issues. 20 Your Honor, Rule 50 provides that judgment as a 21 matter of law may be granted when a reasonable jury would not 22 have a legally sufficient evidentiary basis to find for the 23 party Lawson on that issue. ePlus moves for JMOL that Lawson 24 infringes all the asserted claims of the patents-in-suit, both 25 directly and indirectly, both through inducement of</p>
<p style="text-align: right;">2798</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">2800</p> <p>1 infringement and contributory infringement. 2 I'm not going to go through all the asserted claims, 3 Your Honor. I know Your Honor is familiar with them, and that 4 would just take up too much time, and I know we're pressed for 5 time here this morning with the Court's schedule this 6 afternoon, but let me hit a high point, first start off by 7 saying, we contend that the defendants non-infringement case in 8 this proceeding has been really based on misdirection, that 9 they have ignored the Court's claim construction with respect 10 to catalog. They rewrote the provision for published by a 11 vendor to suit their manufactured non-infringement positions. 12 It required the Court, I think midcourse through this 13 case, to issue the instruction with respect to published by a 14 vendor to bring some clarity to what the Court intended when it 15 gave its instruction with respect to what a catalog is. 16 It did not mean, as the defendant contended, that the 17 item data associated with the catalog could not be selected -- 18 or had to be selected by the customer or modified or deleted or 19 reformatted or be an entire catalog. That was never intended 20 by the Court, and its revised published-by-a-vendor 21 construction made that clear, and I think the arguments made on 22 that, the non-infringement arguments that were based on that 23 have no sound footing in the record on this case. 24 We believe that the best evidence in this case has 25 come from, indeed, Lawson's own witnesses and documents. Mr.</p>

<p>2829</p> <p>1 met, there is no infringement.</p> <p>2 To answer your question, I do agree with ePlus's</p> <p>3 position that capability allows for infringement. The second</p> <p>4 question with respect to the specific issue of catalogs is that</p> <p>5 here, there is no catalog. Like I said, both parties agree</p> <p>6 that at some point data that's been drawn from a catalog, a</p> <p>7 vendor catalog and changed is not a catalog.</p> <p>8 THE COURT: But you don't even agree if I put my</p> <p>9 whole catalog in, that I've got a catalog in the item master</p> <p>10 vendor table.</p> <p>11 MS. HUGHEY: I would agree that that would be an</p> <p>12 infringement if that happened, but it does not, nor is it</p> <p>13 capable of happening. That's my point.</p> <p>14 THE COURT: Why isn't it capable of happening? In</p> <p>15 fact, every witness that testified said it is, including Mr.</p> <p>16 Christopherson. What he said was, in words of one syllable,</p> <p>17 sure, that can done, but that isn't the way it's usually used.</p> <p>18 That's what he said.</p> <p>19 MS. HUGHEY: The evidence that was coming in was that</p> <p>20 the item master -- all the evidence that came in about the item</p> <p>21 master is that it is uniquely organized and created by a</p> <p>22 customer, it does not look like a published catalog, it's a</p> <p>23 private collection of personal items, has special price</p> <p>24 information. These are not -- this is a not a catalog, a</p> <p>25 vendor catalog like the Sears catalog. This is a grocery list.</p>	<p>2831</p> <p>1 that, and 10,000 vendors and you don't have a catalog of what's</p> <p>2 in there just because it came from multiple sources. That's</p> <p>3 what you are saying. You're saying you can't -- you don't have</p> <p>4 a catalog because it came from 10,000 different vendors or a</p> <p>5 thousand.</p> <p>6 MS. HUGHEY: No, that's not why it's not a catalog.</p> <p>7 It's not a catalog because it doesn't meet the Court's</p> <p>8 definition of catalog. The Court's definition of catalog</p> <p>9 requires an organized collection of items and associated</p> <p>10 information published by a vendor.</p> <p>11 At no point was any of the information pulled from a</p> <p>12 catalog and then transformed, as we've gone through in great</p> <p>13 detail, and then put into the item master, also known as a</p> <p>14 grocery list.</p> <p>15 THE COURT: In fact, that's exactly what Mr.</p> <p>16 Christopherson said did happen under the ETL process that he</p> <p>17 testified to in connection with this exhibit, and the T in that</p> <p>18 is transformation. That is exactly what he did.</p> <p>19 MS. HUGHEY: The transformation is the whole point of</p> <p>20 change. There is a -- everyone agrees that the Sears catalog</p> <p>21 or the Montgomery Ward catalog is a catalog. It comes from</p> <p>22 that point, it is -- it is changed and then put in the item</p> <p>23 master like a grocery list. That is the T. That is what we're</p> <p>24 talking about. It's not the same.</p> <p>25 THE COURT: I don't understand why it isn't.</p>
<p>2830</p> <p>1 THE COURT: That isn't the question. Your witness</p> <p>2 testified that the -- that I could put one or more entire</p> <p>3 catalogs into the item master if I wanted to depending on the</p> <p>4 capacity of the item master I bought, and your position is that</p> <p>5 even if I do that, the item master parts list, vendor item list</p> <p>6 isn't a catalog, and I don't understand that at all.</p> <p>7 MS. HUGHEY: Your Honor, the evidence that came into</p> <p>8 this case is that the item master is like a grocery list, and</p> <p>9 so, yes, people were saying in theory -- in context, they were</p> <p>10 talking about what kind of information could be drawn in, but</p> <p>11 in reality, all the evidence came in that that item master is a</p> <p>12 grocery list. It is not a catalog.</p> <p>13 THE COURT: What about something -- you make it sound</p> <p>14 like a grocery list that my wife goes to the store or sends me</p> <p>15 to the store with a list of 20 items. There are hundreds of</p> <p>16 thousands of items in most of these item masters, and they</p> <p>17 came -- all that information came from vendors, and it was --</p> <p>18 and the information -- your user transformed some of it, edited</p> <p>19 some of it and moved some of it, gave some information that's</p> <p>20 not in the catalog such as price because they worked out a</p> <p>21 special price deal, but what's in the catalog that is created</p> <p>22 by the item master is the price, or what's in the item master,</p> <p>23 whatever you want to call it, is the price, for example.</p> <p>24 Now, I don't understand how you can have something</p> <p>25 that's a hundred thousand items, or in many instances more than</p>	<p>2832</p> <p>1 MS. HUGHEY: It's not the same because it doesn't</p> <p>2 meet the Court's definition of catalog. The Court's definition</p> <p>3 of catalog is an organized collection of items and associated</p> <p>4 information published by a vendor.</p> <p>5 THE COURT: What is wrong with that? You can't just</p> <p>6 cite the whole thing. You now need to tell me what part of the</p> <p>7 definition it doesn't fit.</p> <p>8 MS. HUGHEY: Yes. Specifically the published by a</p> <p>9 vendor. It requires the items --</p> <p>10 THE COURT: Why isn't it published by a vendor?</p> <p>11 MS. HUGHEY: The items in the item master have never</p> <p>12 been published by a vendor.</p> <p>13 THE COURT: Of course they have. Where did they come</p> <p>14 from in the first place?</p> <p>15 MS. HUGHEY: There was a published vendor catalog.</p> <p>16 THE COURT: And that was published by the vendor.</p> <p>17 MS. HUGHEY: That was.</p> <p>18 THE COURT: Then I go to the catalog, I look at it,</p> <p>19 and then I have Remington shotgun model 12 in there. Well, my</p> <p>20 system won't take a Remington shotgun model 12, so what I do</p> <p>21 is I take that vendor information, and I transform it to RSG</p> <p>22 and 12 so it will fit the number of characters.</p> <p>23 All I've done is transformed the exact data, loaded</p> <p>24 that into my system, and I have my own little catalog there.</p> <p>25 If I want a AK-47 and a Berretta and a long gun, and I take</p>

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1 arguments, Your Honor?

2 THE COURT: We told the jury to come back at 9:00.

3 So you're going to get those instructions over here by -- I

4 need them by four o'clock tomorrow afternoon. So if that lets

5 you sleep a little later, have at it. Does that take care of

6 everything? I don't intend to clean up night.

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8 (Court adjourned.)

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<p>3078</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF VIRGINIA 3 RICHMOND DIVISION 4 5 ----- 6 ePLUS, INC. : Civil Action No. : 3:09CV620 7 vs. : : 8 LAWSON SOFTWARE, INC. : January 24, 2011 : 9 ----- 10 11 COMPLETE TRANSCRIPT OF THE JURY TRIAL 12 BEFORE THE HONORABLE ROBERT E. PAYNE 13 UNITED STATES DISTRICT JUDGE, AND A JURY 14 15 APPEARANCES: 16 Scott L. Robertson, Esquire 17 Michael G. Strapp, Esquire 18 David M. Young, Esquire 19 Goodwin Procter, LLP 20 901 New York Avenue NW 21 Suite 900 22 Washington, D.C. 20001 23 24 Craig T. Merritt, Esquire 25 Christian & Barton, LLP 909 East Main Street Suite 1200 Richmond, Virginia 23219-3095 Counsel for the plaintiff Peppy Peterson, RPR Official Court Reporter United States District Court</p>	<p>3080</p> <p>1 PROCEEDINGS 2 3 THE CLERK: Civil action number 3:09CV00620, ePlus, 4 Incorporated versus Lawson Software, Incorporated. Mr. Scott 5 L. Robertson, Mr. Craig T. Merritt, Ms. Jennifer A. Albert, and 6 Mr. Michael G. Strapp represent the plaintiff. 7 Mr. Daniel W. McDonald, Mr. Dabney J. Carr, IV, Ms. 8 Kirstin L. Stoll-DeBell, Mr. William D. Schultz represent the 9 defendant. Are counsel ready to proceed? 10 MR. ROBERTSON: Yes, Your Honor. 11 MR. McDONALD: Yes, Your Honor. 12 THE COURT: All right. I was very sorry to hear 13 about Ms. Albert's father passing away. You all both wrote 14 letters about it. I don't see the point in bringing that to 15 the attention the jury. Do either one of you? 16 In the old days, when people didn't do what they were 17 supposed to do, they got keelhauled. I'm about ready to 18 institute that procedure here. It's time for the jury to get 19 going, and I've had to read all this stuff now. I told you 20 what to do about this verdict form, and it was pretty easy, and 21 it's unnecessary to go through all this stuff. 22 Now, apparently we're going to have to revise it 23 anyway because -- and some of the instructions. What 24 instructions have to be revised because Lawson is not 25 contending that the RIMS brochure is prior art? Which one is</p>
<p>3079</p> <p>1 APPEARANCES: (cont'g) 2 Dabney J. Carr, IV, Esquire 3 Troutman Sanders, LLP 4 Troutman Sanders Building 5 1001 Haxall Point 6 Richmond, Virginia 23219 7 Daniel W. McDonald, Esquire 8 Kirstin L. Stoll-DeBell, Esquire 9 William D. Schultz, Esquire 10 Merchant & Gould, PC 11 80 South Eighth Street 12 Suite 3200 13 Minneapolis, Minnesota 55402 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>3081</p> <p>1 arguing? 2 MR. YOUNG: Your Honor, David Young for ePlus. It's 3 instruction 3-A that was submitted to the Court over the 4 weekend. It lists as I think reference number three, RIMS 5 brochure, and that would have to come out now because it 6 appears that Lawson does not have that as an anticipated 7 reference on its own verdict form. 8 THE COURT: Is that right? 9 MR. McDONALD: Yes, that's right, Your Honor. 10 THE COURT: So I suppose I need to tell the jury 11 simply to disregard any testimony about the RIMS brochure as 12 prior art. 13 MR. McDONALD: No, it not anticipatory prior art 14 meaning it's not all by itself anticipating a claim. We're 15 still using it for obviousness and support for the on sale, the 16 RIMS as prior art and 102(a) and (b), but the brochure, all by 17 itself, we're not contending is an anticipating reference, but 18 it would be used to support number one in the instruction which 19 is the Fisher RIMS system as prior art. 20 THE COURT: What do you mean, to be used to support? 21 If you're going to use it -- 22 MR. McDONALD: It's evidence of the Fisher RIMS 23 system as it was being sold and -- 24 THE COURT: Well, if it's evidence of it, it comes 25 out of 39, too, because you're not contending that it is</p>

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<p style="text-align: right;">3122</p> <p>1 got back information that it was temporarily out of stock, 2 please check back soon. Clearly, using the Lawson system, 3 using that punchout capability, there was the capability of 4 determining whether a selected matching item was available in 5 inventory. 6 That functionality is also available with the systems 7 that use the EDI or electronic data interchange capability. 8 Dr. Weaver showed you, if we're using the electronic data 9 interchange module, the purchase order goes to a vendor, and 10 the vendor can reply and the purchase order responds as to 11 whether that item is available in inventory, for example, 12 whether or not the item was backordered. During his 13 demonstration, he showed you a situation in which that 14 happened, and you'll be able to look at that when you're in 15 your deliberations. 16 Let's talk a little bit about this punchout 17 capability. As you know, there's a punchout application that 18 Lawson includes that is accused of infringement in one of the 19 five configurations. Dr. Weaver's demonstration of the 20 punchout capability showed how a punchout user can determine 21 whether an item is available in inventory, and it showed how 22 Lawson creates, communicates, and controls the punchout trading 23 partner websites that an S3 user punches out to. 24 You don't punch out to Dell.com, for example, when 25 you are doing that. You punch out to a specially created Dell</p>	<p style="text-align: right;">3124</p> <p>1 punchout architecture to show you Lawson keeps a bear hug 2 around this entire process, if we can go to the punchout 3 architecture slide. 4 This was one of the Lawson documents. It's the 5 procurement punchout guide, I believe, Plaintiff's Exhibit 6 Number 211. Dr. Weaver testified as to the eight steps that 7 are necessary in order to do the punchout process. These eight 8 steps are set up by Lawson in order to provide this 9 functionality through a user of the punchout system. 10 I'm not going to go through all eight, but that 11 exhibit is back in evidence, and it demonstrates clearly that 12 Lawson is the one that has created, designed, and instituted 13 this entire process to provide that architecture to the user of 14 the system in order to perform the search, the selection, and 15 retrieval of the information necessary to then fill out a 16 requisition and build the purchase orders. 17 Indeed, I thought it was very interesting. The term 18 that Mr. Lohkamp used is that they have to create the handshake 19 with their punchout trading partners in order to do that. Each 20 of these steps is controlled by Lawson, and Lawson controls the 21 authorization process, and Lawson establishes the connection, 22 and Lawson retrieves the information in order to complete the 23 entire purchase process. 24 It was Mr. Lohkamp who also confirmed that Lawson 25 provides the assistance to its customers including manuals,</p>
<p style="text-align: right;">3123</p> <p>1 punchout website that Lawson has worked with Dell in order to 2 set up the communication protocols in order to do that. 3 For example, we can look at the next slide. Here 4 you'll see, and the testimony was that Lawson, when you use 5 this punchout capability, you are always within the Lawson 6 system and that this is not, notwithstanding we are looking at 7 products that are available from the Dell catalog, this is a 8 special Dell website for this, and Dr. Weaver pointed out that 9 you can tell that from what's called the URL address. 10 You are at the Lawson server.corpnet.lawson.com when 11 you are there looking at these Dell products. Lawson 12 established that, Lawson created that, Lawson designed it, and 13 Lawson set up all of the necessary architectures and 14 communication protocols in order to do that. 15 You even heard from Mr. Lohkamp, the product 16 strategist, about how Lawson enters into agreements with its 17 punchout trading partners to develop that connection. He also 18 explained how the punchout partners pay Lawson to configure and 19 test and set up the connection. He said those contracts were 20 mutually beneficial. 21 Now, he also said he had a number of relationships 22 with punchout trading partners that were not contractual, but 23 when I asked him, were they mutually beneficial as well to both 24 Lawson and to the trading partners, he said, yes. 25 If I can just talk to you a little bit about the</p>	<p style="text-align: right;">3125</p> <p>1 training services, and implementation services all to help them 2 configure the procurement punchout with its partners. Indeed, 3 the user of the Lawson system tells Lawson what punchout 4 trading partners they want available to their system, and then 5 Lawson will indeed to do that, and then they charge for that 6 service. 7 May I have the next slide, 43. Indeed, I asked 8 Mr. Christopherson, when the Lawson system punches out to the 9 punchout creating the partner's catalog, you remain connected 10 to the Lawson system; correct? Correct. 11 I'd like to talk to you a little bit now about what's 12 call indirect infringement, some of these issues about inducing 13 and contributory infringement. Indirect infringement, like 14 direct infringement, is still infringement, and ePlus, we 15 believe, has shown through the testimony, again, of Lawson's 16 own witnesses and its own documents that Lawson infringes the 17 claims of the patent both directly and indirectly. 18 The Court will instruct you that Lawson may directly 19 infringe the patents even if they believe in good faith what 20 they are doing is not infringement of any of the patents. The 21 Court will also explain to you the law concerning indirect 22 infringement. In a nutshell, ePlus asserts that Lawson has 23 both induced and contributed to the infringement of ePlus's 24 patents. 25 So what does that mean? Well, to show induced</p>

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<p style="text-align: right;">3298</p> <p style="text-align: center;">3298</p> <p>1 (Jury in.)</p> <p>2</p> <p>3 THE COURT: The jury has decided that it would like</p> <p>4 to return home for the evening and then return in the morning</p> <p>5 and deliberate. What is your pleasure on the time to</p> <p>6 deliberate? Do you want to start at 9:00, start at 9:30?</p> <p>7 Nine o'clock we'll be here and have stuff ready for</p> <p>8 you, and you be ready and you can have -- you can take whatever</p> <p>9 time you feel like you need to deliberate. If you leave your</p> <p>10 notebooks the way you usually do, Mr. Neal will take care of</p> <p>11 them. Thank you. Drive carefully.</p> <p>12</p> <p>13 (Jury out.)</p> <p>14</p> <p>15 THE COURT: Have all these transcripts and these</p> <p>16 things -- you've got everything you need; right?</p> <p>17 MR. STRAPP: Yes.</p> <p>18 MR. CARR: I believe so.</p> <p>19 THE COURT: One thing I need for you all to do is to</p> <p>20 see if there's anything that needs to be cleaned up that I need</p> <p>21 to decide. For example, they've got these motions that have</p> <p>22 been filed yesterday -- this morning or yesterday. I don't</p> <p>23 know what -- by Lawson.</p> <p>24 I need a briefing schedule on them and see what I'm</p> <p>25 supposed to do, and that means you all need to get moving and</p>	<p style="text-align: right;">3300</p> <p style="text-align: center;">3300</p> <p>1 least two attorneys here at all times so I can be reached by</p> <p>2 phone. I'm just right down here at the Hilton Garden Inn, so I</p> <p>3 can be here in four minutes.</p> <p>4 THE COURT: Do you have to trade shoes or can you --</p> <p>5 MR. ROBERTSON: I come equipped. I will be right</p> <p>6 over here pronto, but we'll have somebody here at all times.</p> <p>7 THE COURT: That's fine.</p> <p>8 MR. ROBERTSON: All right. Thank you.</p> <p>9 THE COURT: Now, is he coming back? Mr. McDonald or</p> <p>10 Ms. Stoll-DeBell?</p> <p>11 MR. CARR: As far as I know, he's not coming back.</p> <p>12 THE COURT: Well, then, I know not to schedule any</p> <p>13 arguments, I guess, until I'm certain. All right. I guess</p> <p>14 that solves it for now. Thank you very much. We'll be in</p> <p>15 adjournment.</p> <p>16</p> <p>17 (Court adjourned.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">3299</p> <p style="text-align: center;">3299</p> <p>1 decide how you want to proceed, little things like that so we</p> <p>2 can get that sorted out. I'd like to get all this done just as</p> <p>3 soon as I can.</p> <p>4 MR. ROBERTSON: I'll call Mr. McDonald tomorrow once</p> <p>5 he gets back to Minnesota. I understand he's gone back.</p> <p>6 THE COURT: He's what?</p> <p>7 MR. ROBERTSON: I'll call Mr. McDonald tomorrow in</p> <p>8 Minnesota. I know he's traveling --</p> <p>9 THE COURT: He's in Minnesota?</p> <p>10 MR. CARR: He is leaving this evening, yes.</p> <p>11 THE COURT: Are you fully empowered?</p> <p>12 MR. CARR: Yes, sir.</p> <p>13 MR. ROBERTSON: I'll just --</p> <p>14 THE COURT: Does he understand that the juries have a</p> <p>15 lot of questions sometimes?</p> <p>16 MR. CARR: He does.</p> <p>17 THE COURT: Okay.</p> <p>18 MR. ROBERTSON: I'll work out a briefing schedule,</p> <p>19 Your Honor, and we'll take care of it in short order. Maybe we</p> <p>20 can decide some of things have been mooted by some of Your</p> <p>21 Honor's rulings.</p> <p>22 THE COURT: They very well may have. I don't know</p> <p>23 the answer to that. Some of them may not, but I want to make</p> <p>24 sure we get it done.</p> <p>25 MR. ROBERTSON: Your Honor, I intend on having at</p>	